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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 251

ISAAC SIMS, JR., PETITIONER,

vs.

GEORGIA

ON WRIT OF HABEAS CORPUS TO THE SUPREME COURT OF THE STATE
OF GEORGIA

PETITION FOR HABEAS CORPUS FILED NOVEMBER 22, 1966
CERTIORARI GRANTED JUNE 29, 1967

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

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ISAAC SIMS, JR., PETITIONER,

vs.

GEORGIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF GEORGIA

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[fol. 1] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA

INDICTMENT—Filed October 6, 1964

THE GRAND JURY, selected, chosen and sworn for the County of Charlton, to-wit:

- | | |
|--------------------------|----------------------|
| 1. M. D. Thrift, Foreman | 13. J. Malcolm Wade |
| 2. R. W. McDopald | 14. Ferris R. Gowen |
| 3. Ed Brunson | 15. James W. Altman |
| 4. Clarence Carter | 16. Roy A. Taylor |
| 5. D. R. Wainwright | 17. J. P. Conner |
| 6. Willie Dixon | 18. E. O. Roberson |
| 7. Owen Taylor | 19. J. C. Jones, Jr. |
| 8. H. T. White | 20. |
| 9. B. H. Gowen | 21. |
| 10. Donald Phillips | 22. |
| 11. James A. Ross | 23. |
| 12. Bob Glisson | |

In the name and behalf of the Citizens of Georgia, charge and accuse Isaac Sims, Jr., with the offense of Rape. For that the said Isaac Sims, Jr. on the 13th day of April, in the year Nineteen Hundred and Sixty-three in the County aforesaid, did then and there unlawfully and with force and arms, did make an assault upon the person of Nola Jean Roberts, and did strike, beat, and choke and wound her, and did have carnal knowledge of and sexual intercourse with said Nola Jean Roberts, a female, forcibly and against her [fol. 2] will, contrary to the laws of said State, the good order, peace and dignity thereof.

Charlton Superior Court, October Term, 1964.

Nola Jean Roberts, Prosecutor.

Dewey Hayes, Solicitor-General, Waycross Judicial Circuit.

SPECIAL PRESENTMENT

WITNESSES FOR THE STATE, Nola Jean Roberts, F. F. Cornelious, Dr. Jackson, Homer Allen, Dudley Jones, Bob Adkins, Noah Stokes.

[File endorsement omitted].

The Defendant Isaac Sims, Jr. Waive formal Arraignment, copy of Bill of Indictment, list of witnesses, sworn before the Grand Jury, and agree to strike from a panel of 48 Jurors and plead not guilty.

This 7th day of October, 1964.

William H. Alexander, Howard Moore, Jr., Defendant's Attorney, Dewey Hayes, Dewey Hayes, Solicitor-General, Waycross Judicial Circuit.

[fol. 3] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

VERDICT—October 8, 1964

We, the Jury find the Defendant Guilty as charged. This 10-8-1964.

L. H. DeVane, Foreman.

[fol. 4] **IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA**

October Term, 1964

Indictment No. 1488

STATE OF GEORGIA

vs.

ISAAO SIMS, JR.

PLEA IN ABATEMENT—Filed October 7, 1964

Comes now, the defendant, ISAAO SIMS, JR., prior to pleading to said indictment, and moves this Court to abate the pending case under indictment No. 1488, and for grounds, shows as follows:

1.

That on October 6, 1964 the defendant was indicted for the crime of rape by the Grand Jury of Charlton County, Waycross Judicial Circuit, for the October Term, 1964.

2.

That the Grand Jury which returned a True Bill against the defendant was illegally composed, and the indictment returned by it against the defendant is illegal, erroneous and void, for the reason that it is in derogation of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, and Article I, Section 1, paragraph 3 of the Constitution of the State of Georgia of 1945, in that:

(a) Negroes have been systematically and arbitrarily excluded from service on grand juries in Charlton County for a period of many years;

(b) That there are many Negroes who own property and whose names appear on the Tax Digest of Charlton County and who are among the most intelligent and upright citizens in said County;

[fol. 5] (c) That over a period of more than ten years, there have been no Negroes, or virtually no Negroes,

4
who have served on the grand jury in Charlton County; that the sole reason for their arbitrary and systematic exclusion has been their race or color;

(d) That according to the United States Census for the year 1960, there are 2,656 persons living in Charlton County who were twenty-one years of age or over; of this group, 965 are white males and 963 are white females; whereas, 353 are non-white males and 375 are non-white females;

(e) That at no time in the history of Charlton County has a Negro served as a jury commissioner;

(f) That the jury commissioner select the names for the Grand Jury lists from the Tax Digests of Charlton County;

(g) That the Tax Digests of Charlton County are maintained and kept on the basis of race or color; that is, each digest is divided into a part for white taxpayers and one for Negro taxpayers.

3.

The Negroes have been systematically excluded or included on the Grand Jury lists of Charlton County, including the grand jury which returned a True Bill against the defendant in the instant case, over a period of many years.

4.

That the defendant is a member of the Negro race and a citizen of the United States and of the State of Georgia.

5.

That the defendant was not given any notice or furnished a reasonable opportunity to challenge the array of the grand jury prior to the time of the return of this indictment as a true bill.

[fol. 6] WHEREFORE, defendant prays that this indictment against him abate and be forever barred.

/s/ Howard Moore, Jr., William H. Alexander, 859½
Hunter St., N. W., Atlanta, Georgia 20314.

Duly sworn to by Isaac Sims, Jr.

[Jurat omitted in printing].

[File endorsement omitted].

The within plea in abatement is hereby denied. B. H.
This 7 day October, 1964.

Ben Hodges, J. S. C.

[fol. 7] IN THE SUPERIOR COURT OF CHARLTON COUNTY
GEORGIA

OCTOBER TERM, 1964

INDICTMENT No. 1488

[Title Omitted]

CHALLENGE TO THE ARRAY—Filed October 7, 1964

The accused in the above-captioned indictment, having had the array of jurors summoned in the above case put upon him, hereby excepts to said array, and for cause of exception shows:

1.

That, at the time the said panel of traverse or petit jurors was impanelled, presently, and for many years in the past, Negroes have been systematically and arbitrarily excluded from service on the traverse juries and traverse jury lists in Charlton County on the grounds of their race or color in derogation of the Fourteenth Amendment to the United States Constitution, Section 1, and Article I, Section 1, paragraph 3 of the Constitution of the State of Georgia of 1945; or they have been systematically and arbitrarily included on traverse juries or traverse jury lists as of the time the current jury was impanelled and is now impanelled in derogation of the hereinbefore mentioned and designated constitutional provisions.

2.

That the accused is a member of the Negro race and is a citizen of the United States and of the State of Georgia.

3.

That the accused avers that Negroes have been systematically and arbitrarily excluded from or included for [fol. 8] service on traverse juries or traverse jury lists for a period of many years. When Negroes are systematically included on said jury lists, their names are usually placed at the end of the list and designated as

"colored" or "IC" or otherwise. Further, in circumstances where it is likely that a Negro will be selected as a juror in a criminal case involving a member of his race, they are systematically struck and challenged and thereby arbitrarily prevented from actually sitting as a juror in such cases due to their color or race.

4.

That there are many Negroes who own property and whose names appear on the Tax Digest of Charlton County and who are intelligent and upright citizens.

5.

That according to the United States Census for the year 1960, there were 2,656 persons living in Charlton County who were twenty-one years of age or over; of this group, 965 were white males and 963 were white females; whereas, 353 of said group were non-white males and 375 non-white females.

6.

That at no time in the history of Charlton County has a Negro ever served as a jury commissioner.

7.

That the jury commissioners are charged by law with the responsibility of selecting from among the names of those whose names appear on the Tax Digest of said county persons qualified by law to serve as traverse jurors and to place said names upon the traverse jury list, which is revised from time to time according to law.

[fol. 9] That the Tax Digests of Charlton County are kept and maintained on the basis of race or color; that is, said Tax Digests are divided by race or color with one section for white taxpayers and another section for Negro taxpayers. When and where the tax digests are not divided, on the basis of race or color, the race or color of the taxpayer is made to appear by symbol, descriptive reference, or otherwise designated. Therefore, the process for selecting traverse jurors in said county is inherently discriminatory and in derogation of Article I, Section 1, para-

graph 3 of the Constitution of the State of Georgia of 1945, and Section 1, Fourteenth Amendment Constitution of the United States, independent of any other facets, and aspects of the scheme and practice of selecting jurors in said county upon the basis of race or color.

9.

That the aforesaid process of selecting the names of grand and traverse jurors, increases the probability that Negroes will either be systematically and arbitrarily excluded or systematically and arbitrarily included from or for service on traverse juries in said country.

WHEREFORE, the accused prays that this allegation of this his challenge to the array be inquired into and that the said array be quashed, and that the accused have such other relief as is in the premises just and meet.

/s/ Howard Moore, Jr., Howard Moore, Jr., William H. Alexander, 859½ Hunter St., N. W., Atlanta, Georgia 30314, Attorneys for the Accused.

[fol. 10]

[File Endorsement Omitted]

Motion overruled.

This 7 day of October 1964.

Ben Hodges, J.S.C.

[fol. 11] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA

WAYCROSS JUDICIAL CIRCUIT

[Title Omitted]

MOTION FOR CHANGE OF VENUE—Filed October 7, 1964

NOW COMES, ISAAC SIMS, JR., defendant named in the above-captioned indictment, before pleading to the same, and moves this Court for an Order changing the venue for the trial of the offense alleged in said indictment. As grounds therefor, movant shows:

1.

That on April 13, 1963 movant was taken into custody at gun point and subsequently charged with the offense of rape. On the day the alleged offense purportedly occurred, large crowds of white people gathered at or near the scene and burnt a car which they assumed was used by the perpetrator.

2.

That after the movant was taken into custody he was beaten by private citizens while in the custody and presence of law enforcing officers. Movant subsequently was taken to Ware County for safekeeping, because law enforcing officers feared for movant's safety.

3.

That at the October Term, 1963 of the Charlton County Superior Court movant was convicted by an all white jury of the offense of rape without a recommendation to mercy, [fol. 12] making the movant the first person sentenced to death for rape since 1913 in said county.

4.

That following movant's conviction as aforesaid his court-appointed white attorney, Carroll Russell, a resident of nearby Blackshear, Georgia, refused and failed to file a

motion for new trial or to otherwise appeal movant's conviction and withdrew from the case. This Court failed to appoint other counsel to appeal movant's conviction, which resulted in the Supreme Court of Georgia reversing movant's conviction on appeal from denial of his petition for writ of habeas corpus in the City Court of Reidsville within hours of the imposition of the death penalty brought by movant's present counsel. *Sims v. Balkoom*, 136 SE 2d 766 (1964).

5.

That the Honorable Dewey Hayes, who represented the state in the previous trial, upon inquiry by movant's present counsel as to the existence of a transcript of the proceedings had upon the trial of this indictment at the October Term, 1963 of this Court, concealed the existence of said transcript. However, the said Dewey Hayes appeared at the oral argument in the Supreme Court of Georgia and read from said transcript in his efforts to have that court affirm the denial of the petition for writ of habeas corpus, at which time the Chief Justice ordered the said Dewey Hayes to make said transcript available to movant's counsel. Movant's counsel were substantially hampered and frustrated by said concealment.

6.

That the alleged victim of the rape, Nola Jean Roberts, is the daughter of Mrs. Lonnie Roberts, who is the Post-[fol. 13] master of St. George, Georgia, near where the offense allegedly occurred. As Postmaster of St. George, Mrs. Roberts and her family are well known by all of the 2,656 persons resident in said county above the age of 21 and likely to be called for jury service in this case.

7.

That a total of 110 persons have been summons for jury service for the October Term, 1964 of this Court. On information and belief, approximately 14 or more of the persons whose names appear on said jury list are related by blood, marriage, or other substantial bonds of friendship and affection to officials of this Court and county and law enforcing officers involved at some stage in the

arrest, detention, and trial previously had of the offense alleged in the indictment.

8.

That, if in fact any Negroes have been summoned for jury service for the October Term, 1964 of this Court, the number actually summons is dis-proportionate to the number actually qualified to serve and results from the arbitrary and systematic exclusion or inclusion of Negroes for jury service long-practiced in said county.

9.

That this case has been the subject of much local and state-wide publicity. It has been the subject of newspaper articles and discussion in bar journals.

10.

That the movant is presently lodged in the Ware County jail at Waycross, Georgia, due to the fear and concern of local officials that due process will be aborted by those who harbor great dislike, prejudice and hostility in this county [fol. 14] for the movant.

11.

That to force the movant to trial on the said indictment in the Superior Court of Charlton County now holden at Folkston, Georgia, under the circumstances hereinbefore alleged violates the movant's right to a fair and impartial trial as provided for by the equal protection and due process of law clauses of the Fourteenth Amendment, United States Constitution and Article I, Paragraphs 3, 5, and 25 of the Constitution of the State of Georgia of 1945.

WHEREFORE, movant prays that his motion be inquired into and that the Court enter an Order changing the venue for the trial of said indictment, or in the alternative grant such other relief or Order as will secure to the movant a jury and forum uninfluenced by local prejudice and bias.

/s/ Howard Moore, Jr., Howard Moore, Jr., William H. Alexander, 859½ Hunter Street NW, Atlanta, Georgia 30314, Attorneys for Movant.

[fol. 15]

VERIFICATION

I hereby swear that the within motion is made in good faith and not for the purpose of delay and that the facts alleged therein which are matters of my own personal knowledge are true and those alleged on information and belief I believe to be true and correct.

This 7th day of October, 1964.

/s/ Howard Moore, Jr., Howard Moore, Jr.

Subscribed and sworn to before me, this 7th day of October, 1964.

William H. Alexander (Seal), Notary Public. My Commission Expires Sept. 4, 1967.

[File Endorsement Omitted]

Overruled.

This 7 day of October, 1964.

Ben Hodges, J.S.C.

[fol. 16] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA, WAYCROSS JUDICIAL CIRCUIT

[Title Omitted]

MOTION TO SUPPRESS ILLEGALLY OBTAINED EVIDENCE—
Filed October 7, 1964

NOW COMES, ISAAC SIMS, JR., defendant in the above-captioned indictment, before pleading to the same, and moves this Court to suppress an alleged confession obtained from the movant in violation of the Fourth, Fifth, and Sixth Amendments to the United States Constitution as the same are made to apply to the State of Georgia by virtue of the Fourteenth Amendment thereto and in violation of Article I, Paragraphs 3 and 5, Constitution of the State of Georgia of 1945.

As grounds therefor, movant shows;

1.

That on April 13, 1963 movant alone, without counsel or friends to advise him, wholly ignorant of his rights, and in great pain and fear for his life, unwittingly and without understanding the legal significance signed the following statement:

"2-13-1963. 10:30 P.M.

I, Isaac Sims, Jr., age 27 years, resident of Folkston, Georgia, make the following statement freely and voluntarily; I have not been threatened or promised anything. I know that this statement can be used against me in Court.

[fol. 17] I, Isaac Sims, Jr., on April 13, 1963, was driving Cleo Jackson's 1953 or '54 Bel Air Chevrolet, colored brown and white. About 10 o'clock, A.M. I was driving down the St. George Highway. I drove up behind a white woman driving a new looking car, color white. I was drinking whiskey at the time. The closer I got to her car I had a feeling to have dealings with this white woman. I took the car I was driving, bumped her car several times. Finally I knocked her

car in the ditch. I got out of my car as she got out of her car. I grabbed her. I pulled her across the road into some bushes. She was wearing pedal pushers, gray looking. She kept fighting me and I hit her in the face, knocked her down. She kept hollering for help. Then I was afraid someone would hear her, so I choked her. Then I tore her pedal pushers off. She was in her monthly period. She had a kotex on. I pulled that off of her and forced her to have intercourse with me. When I finished I walked back to where the car I was driving was parked. I could not get my car started. I would not crank, so then I realized that I was in trouble, and I ran through the woods to Mr. Walter Hopkins' place at Toledo, a distance of about ten miles. Some colored boys told me there was a lot of people and dogs hunting someone. These colored boys went to Mr. Hopkins and told him where I was at the home of a girl named Margie. Mr. Stokes and another white man came and picked me up and carried me to the sheriff. The pants and [fol. 18] shorts I was wearing had blood on them. This statement is made freely and voluntarily in the presence of Sheriff Lee, Ware County, Georgia, Chief Johnson, Chief of the Ware County Police Department, Dudley Jones, Deputy Sheriff of Ware County, Georgia, and B. C. Worley, Constable of the 1231st District of Ware County, Georgia. I have been informed of my legal rights by Sheriff Robert F. Lee that I did not have to make any statement whatsoever, knowing that this statement can be used against me in a court of law. I have had the statement read, which consists of four pages, which is a true and correct statement made by me."

Said statement was signed in the presence of the law enforcing officers named therein in the Sheriff's office at the Ware County Jail, Georgia.

2.

That movant was taken into custody at gun point when he appeared at a friend's house in a place called Toledo, quarters for Negro pulp wood workers about 10 miles from

the scene of the alleged offense, at about 2.30 P.M., April 13, 1963. Movant was turned over by Negro employees of two white men who owned the quarters in which the Negroes lived. The white men took the movant to the scene where the offense allegedly occurred and turned him over to the Sheriff of Charlton County and a state patrolman. A large crowd of white people had gathered at the scene. Movant was taken from the scene to Dr. Jackson's office in Folkston, Georgia, where he was brutally beaten, manhandled, and stripped of his clothing. As [fol. 19] a results of the beating, eighteen stitches were taken over movant's right eye; movant experienced a partial lost of vision and other pains and discomforts which persisted for a considerable length of time. For safekeeping movant was taken from Folkston, Georgia, where he lived and worked, to Waycross, Georgia, about 35 miles from Folkston, and lodged in the Ware County jail.

3.

That movant cannot read or write. Movant was without counsel at the time he signed the alleged statement and did not know and meaningfully understand what was meant by his right to have an attorney at the time as alleged in said statement; nor did movant comprehend the meaning of said statement. Movant thought that he was required to sign said statement and did not understand that he was implicating himself in a crime which he did not commit.

4.

That movant is a member of the Negro race and a citizen of the United States and of the State of Georgia.

5.

That the totality of the circumstances under which said statement was obtained from the movant violate the Fourth, Fifth, and Sixth Amendments to the United States Constitution as made applicable to the State of Georgia by the Fourteenth Amendment thereto and Article I, Paragraphs 3 and 5, Constitution of the State of Georgia of 1945.

WHEREFORE, movant prays that this is motion to suppress illegally obtained evidence be inquired into and that said [fol. 20] evidence be suppressed and excluded on the trial of said indictment or in the alternative said indictment be quashed.

/s/ Howard Moore, Jr., Howard Moore, Jr., William H. Alexander, 859 1/2 Hunter Street, NW, Atlanta, Georgia 30314, Attorneys for Movant.

[File Endorsement Omitted]

The within motion is denied.

This 7 day of October, 1964,

Ben Hodges, J.S.C.

[fol. 21] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA, WAYCROSS JUDICIAL CIRCUIT

[Title Omitted]

PLEA IN ABATEMENT—Filed October 7, 1964

NOW COMES, ISAAC SIMS, JR., defendant in the above numbered indictment, before pleading to the indictment herein, files this is plea in abatement. As grounds therefor shows:

1.

That Title 26, Georgia Code Annotated, Section 1302, under which punishment is imposed for a conviction of the crime of Rape, a violation of Title 26, Georgia Code Annotated, Section 1302, is unconstitutional upon its face. Said statute fails to set out any standard by which the jury is to be guided in imposing punishment pursuant to it. Under said statute, the jury may impose any sentence it agree upon from electrocution, to life imprisonment, to one to twenty years in prison. To the extent that said statute imposes the sentence of death for rape, it contravenes evolving standards of decency and inflicts cruel and unusual punishment. Therefore, said statute violates the due process of law clause of the Fourteenth Amendment, United States Constitution, and Article I, Paragraph 3, Constitution of the State of Georgia of 1945, and the Eight Amendment, United States Constitution, as made applicable to the several states by the Fourteenth Amendment, United States Constitution. Said statute being worded thusly:

[fol. 22] "*Punishment recommendation by jury to mercy.* The crime of rape shall be punished by death, unless the jury recommends mercy, in which event punishment shall be imprisonment for life; Provided, however, the jury in all cases may fix the punishment by imprisonment and labor in the penitentiary for not less than one year nor more than 20 years. (Cobb, 787. Acts 1866, p. 151; 1960, p. 266)."

That Title 26, Georgia Code Annotated, Section 1302, has been applied so as to deny persons of the Negro race the equal protection of the law in violation of the Fourteenth

Amendment, United States Constitution, and of Article I, Paragraph 25, Constitution of the State of Georgia of 1945; in that:

(a) the State of Georgia has primarily executed persons of the Negro race for the crime of rape, having executed 58 Negro persons and 3 white persons for the crime of rape since the year 1930; (b) should the death penalty be imposed upon the defendant in this case, it imposition will be erratic and arbitrary. Since 1913, only two other persons have been sentenced to death in Charlton County, Georgia. In each case the person so sentenced was charged with the offense of murder. In each case, after new trials, the sentences were commuted to life imprisonment; and (c) the pattern and practice of sentencing Negro persons to death for the crime of rape is a facet of the racial caste system which is deeply rooted in the history, public policy, [fol. 23] and attitudes which are prevalent within the State of Georgia and particularly in Charlton County, Georgia.

3.

That the defendant is a member of the Negro race and a citizen of the United States and of the State of Georgia.

WHEREFORE, defendant prays that this his plea in abatement be inquired into and that an order be entered abating the application of said statute to this indictment and that said statute be declared unconstitutional.

/s/ Howard Moore, Jr., Howard Moore, Jr., William H. Alexander, 859½ Hunter Street, N.W., Atlanta, Georgia 30314, Attorneys for Defendant.

[fol. 24]

VERIFICATION

Duly sworn to by Isaac Sims, Jr., jurat omitted in printing (all in italics).

[File Endorsement Omitted]

The within plea in abatement is hereby denied. B.H.

This 7 day of October 1964.

Ben Hodges, J.S.C.

[fol. 25] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA LIST OF JURORS IN THE CASE OF

Wed. — —

Jury		State	Def.	
1	1			Lawrence Flewell
	2		1	Lewis Crews
	3			George W. Chism
	4		2	Charles J. West
	5		3	G. W. Crews
	6		4	W. C. Hall
	7		5	Arnold Johns
	8		6	George E. Bell
	9		7	Julian Crews
	10		8	C. L. Conner
2	11			S. C. Padgett
	12	1		Sol Houston
3	13			Cecil A. Parish
	14			Kenneth M. Crews
4	15			Harley Hickox
	16			Jimmy H. Crews
5	17			L. H. Devane
	18		9	Jack R. Mays
	19			Bruce L. Thompson
	20	2		Troy Robinson
	21		10	J. A. Prevatt
	22		11	Leon Petty
	23	3		Norris Mitchell
	24		12	Emanuel Knowles
	25			Albert Gowen
	26			George O. Harden
	27			Willie Crews
	28		13	W. C. Harden
[fol. 26]	29	14		Charlie Scarbrough
	30			Bobby James
	31		15	William Pafford
6	32			Basil Crews
	33			Leon Askew
	34			B. M. Prescott, Sr.
	35		16	C. L. Passieu
	36			Oscar H. Leekie
	37			O. D. Raulerson

Jury		State	Def.
	38		William Smith
7	39		Richard P. Mays
	40		B. M. Prescott, Jr.
	41	17	T. H. McLean
	42	18	James Vernon Aldridge
	43	19	George Johns
	44	20	F. L. Murray, Sr.
8	45		Kenneth T. Wainwright
	46		Oscar S. Fowler
	47		Allen Nasworth
9	48		David Glisson
	49		Henry L. Bailey
	50	4	Vandell Redmond
	51	5	J. J. Conner
10	52		W. L. Morris Sr.
11	53		Cecil Privett
12	54		Charlie F. Lloyd
	55		Raymond Eugene Chesser
	56		Eldon Woolard Sr.
[fol. 27]	57		W. E. Renshaw
	58		E. M. Batton Jr.
	59		Dr. J. S. Taylor
	60		W. F. Price
	61		Eugene Davis
	62		Earl Crews
	63		E. Hickox
	64		Jerome Crews
	65		W. C. Mizell
	66		O. K. Lowther
	67		Buford Thrift
	68		Central Garard
	69		Charlie E. Harden
	70		Walter N. Coleman, Jr.
	71		Donald Nettles
	72		Vern J. Pickren

[fol. 28]

1	Lonnie Guinn
2	Herbert M. Crews
3	Lacy Conner
4	L. C. Black
5	Albert Brantley
6	James Bolden
7	Marvin D. Chancey
8	Wallace Hodges
9	Vinton Thompson
10	Edgar Woolard
11	R. L. Canaday
12	H. L. Clark
13	Emory L. Griffis
14	Robert Everett
15	L. R. Gainey
16	Edward Hickox
17	D. E. Sikes
18	Francis Turner
19	Morris Taylor
20	W. C. Odom
21	Bud Cantrell
22	Sherman W. Raulerson
23	Fred D. Askew, Jr.
24	J. D. Hickox
25	Cecil J. Glisson
26	J. T. Pascal
27	Felton Thrift

[fol. 29] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA

MOTION FOR NEW TRIAL—Filed October 8, 1964

No. 1488

[Title omitted]

Verdict and judgment for The State at October Term, 1964 of Charlton Superior Court, on 8th day of October, 1964.

The Defendant being dissatisfied with the verdict and judgment in said case, comes during said term of court, before the adjournment thereof, and within 30 days from said trial, and moves the court for a new trial, upon the following grounds to wit:

- 1st. Because the verdict is contrary to evidence and without evidence to support it.
- 2nd. Because the verdict is decidedly and strongly against the weight of evidence.
- 3rd. Because the verdict is contrary to law and the principles of justice and equity.

Whereupon he prays that these, his grounds for a new trial, be inquired of by the court, and that a new trial be granted him.

Howard Moore, Jr., Attorney for Movant

Read and considered. It is ordered that the State show cause before me, at Waycross, Ga., at 10 o'clock on the 15 day of December 1964 why the foregoing motion should not be granted. It is further ordered that the State be served with a copy of this motion and order; and that this [fol. 30] order act as a supersedeas until the further order of the court.

The 8 day of October 1964.

Ben Hodges, Judge of Superior Court

THE STATE

VS.

ISAAC SIMS

Verdict and judgment for The State

October term, 1964, of Charlton Superior Court.

This defendant having made a motion for a new trial in said case, on the grounds therein stated, and said grounds having been approved by the court, it is ordered by the court that said motion be heard and determined on the 15 day of December, 1964 at Waycross, Ga. 10 o'clock A.M. and that movant may amend said motion at any time before the final hearing.

If for any reason said motion is not heard and determined at the time and place above fixed, it is ordered that the same shall be heard and determined at such time and place in vacation as counsel may agree upon, and upon failure to agree, then at such time and place as the presiding judge may fix on the application of either party, of which time and place the opposite party shall have at least five days' notice.

If for any reason this motion is not heard and determined before the beginning of the next term of this court, then the same shall stand on the docket until heard and determined at said term or thereafter.

It is further ordered that the movant have until the [fol. 31] hearing, whenever it may be, to prepare and present for approval a brief of the evidence in said case, and the presiding judge may enter his approval thereon at any time, either in term or vacation, and if the hearing of the motion shall be in vacation, and the brief of evidence has not been filed in the clerk's office before the date of the hearing, said brief of evidence may be filed in the clerk's office at any time within ten days after the motion is heard and determined.

This 8 day of October 1964.

Ben Hodges, Judge of Superior Court.

[File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 32] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA

OCTOBER TERM, 1964

No. 1488

[Title omitted]

INDICTMENT FOR RAPE

AMENDED MOTION FOR NEW TRIAL—Filed January 15, 1965

Comes now, the movant, ISAAC SIMS, JR., and with leave of this Honorable Court, amends his previously filed skeleton motion for new trial by adding thereto the following special grounds, to-wit:

1.

Because, as movant contends, the Court illegally and erroneously admitted movant's statement, over timely objection and illegally and erroneously overruled movant's timely motion to quash and exclude said statement together with the testimony of Sheriff Robert E. Lee relative to said statement. The evidence, statement, objection thereto, and the ruling of the Court were as follows:

"Robert E. Lee was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Solicitor General) Will you state your name for the record?

A. Robert Lee.

Q. What position do you hold in Ware County, if any?

A. Sheriff of Ware County.

Q. Were you sheriff in April, 1963?

A. Yes, sir.

[fol. 33] Q. Sheriff, do you remember the occasion back on April 13th, 1963, when Nola Jean Roberts was raped?

A. Yes, sir.

Q. Sheriff, I will ask you if you had an occasion to see the defendant, Isaac Sims, here before.

A. Yes, I have.

Q. Sheriff, did you see him on the 13th day of April last year—'63?

A. Yes, sir.

Q. About what time of day or night did you see him?

A. Approximately 10:30 P.M.

Q. And where did you see him?

A. In the jail in Ware County.

Q. And whereabouts in the jail?

A. Downstairs in the interview room.

Q. Did you ever see him any other place in the jail except in the interview room?

A. Later upstairs in the third floor later, not that night. It was several days later.

Q. You did see him sometime later up there?

A. Yes.

Q. But I'm talking about on this night.

A. That's the only time.

Q. And when you first saw him on April 13th that night was anybody else in the interview room except you and the defendant Sims?

A. Three other persons.

Q. Who was that, Sheriff?

A. Dudley Jones, Estis Johnson, and B. C. Worley.

[fol. 34] Q. Did the defendant make any statement to you or in your presence?

A. Yes, he did.

Q. Who was the presiding officer there?

A. I was.

Q. Who was in charge?

A. I was.

Q. What were the circumstances surrounding him making that statement?

A. I received a call from Dudley Jones, Deputy Sheriff.

Q. Don't tell what he said. Now, you received a call, and what happened?

A. After going down to the jail I telephoned Sheriff Sikes, and then Isaac Sims was brought downstairs to the interview room, and in the presence of the three others I've named and myself he made a statement.

Q. At whose request did he come down and make the statement?

A. He came down—he made the statement that he wanted to make a statement of what had happened.

Q. And, Sheriff, when the statement was made did you or anyone else promise him anything to make a statement?

A. No, sir. He was advised by me that his statement could be used against him in court, and that before he made a statement he was entitled to an attorney.

Q. Was he induced by you or anybody else to make a statement?

A. Yes, sir, I—

Q. (Interposing) Was he induced by you?

A. I identified myself and the other three officers.

Q. You didn't understand that question.

[fol. 35] The Defendant's Attorney: I think the witness answered it.

The Solicitor General: I asked him if he or anyone else induced him to make a statement.

The Defendant's Attorney: He didn't answer like—the Solicitor wanted him to.

Q. (By the Solicitor General) I will re-ask the question. Sheriff: Was he induced by you or anybody else to make a statement?

A. No, sir.

Q. Was the slightest hope of benefit or reward offered to him to make a statement?

A. No, sir.

Q. Was the remotest fear of injury put to him in any way?

A. No, sir. He made the statement freely and voluntarily.

Q. Did you advise him of his Constitutional rights?

A. Yes. I advised him that before he made a statement he was entitled to an attorney.

Q. Did he say he wanted one or didn't want one?

A. He said he didn't want one.

Q. All right, what else did you advise him?

A. I advised him that the statement he was going to give could be used against him in Court.

Q. Sheriff, was the statement reduced to writing?

A. Yes, it was.

Q. Who took it down?

A. Dudley Jones.

Q. Sheriff, I will hand you Exhibit No. 2 for the State and ask you to examine it. Let me ask you this: At whose direction was the statement made? Who was in charge of it? [fol. 36] A. I was.

Q. Will you examine Exhibit No. 2 for the State that I just handed you?

A. This is the statement that was taken by Deputy Sheriff Dudley Jones on the night of April 13, 1963, in the presence of myself, Chief Johnson, Dudley Jones, and B. C. Worley.

Q. Was it made under your supervision and control?

A. Yes, sir.

Q. Is that the statement that was made?

A. Yes, sir, this is the statement that was made. It consists of four pages. Isaac Sims signed each page at the bottom.

Q. Will you read that statement to this jury?

A. The Defendant's Attorney: Your Honor, I object and move that the witness' testimony be stricken from the record on the same ground, without repeating it, that I moved to exclude Mr. Dudley's testimony, because the foundation to make that statement admissible has not been laid. I raise the same objection.

The Court: I overrule the objection.

Q. (By the Solicitor General) Go ahead and read it.

The Defendant Attorney: Your Honor, we'd like to have the opportunity to examine this witness before the statement is read into the record.

The Court: All right.

The Solicitor General: Would you like to do it at this time?

The Defendant's Attorney: I believe the rule requires that the jury be excused.

[fol. 37] The Court: All right, let the jury go to the jury room.

(The jury thereupon retired from the courtroom.)

The Solicitor General: I was under the impression that he had already examined Sheriff Lee this morning concerning this statement, and that is a matter of record.

The Court: All right.

The Defendant's Attorney: As Your Honor knows, the

rule has been recently changed by the Supreme Court of the United States, and we did have an opportunity to examine the witness today, and on that basis, your Honor, I withdraw my request that the jury be excused and let him proceed with the direct examination. I don't know whether the procedure being followed at this time satisfies the rule decided by the Supreme Court on June 22nd, 1964, that the Court must make judicial determination whether the statement was made voluntarily before it is read to the jury. We did make an examination today, and I withdraw the request for the jury to be excluded.

The Court: All right, bring the jury back.

(The jury thereupon returned to the jury box.)

Q. (By the Solicitor General) Now, Sheriff, would you read the statement that the defendant made on that occasion—read it to the jury.

A. The date, '4-13-63. 10:30 P.M. I, Isaac Sims, Jr., age twenty-seven, resident of Folkston, Georgia, make the following statement, freely, and voluntarily. I have not been promised anything—I have not been promised anything. I know that this statement can be used against me in court. I Isaac Sims, Jr., on April 13, 1963, was driving Cleo Jackson's 1953 or 54 Bel Air Chevrolet, color brown and white, [fol. 38] about 10 o'clock A.M. I was driving down the St. George highway. I drove up behind a white woman driving a new looking car, color white. I was drinking whiskey at the time. The closer I got to her car I had a feeling to have dealings with this white woman. I took the car I was driving, bumped this lady's car several times. Finally I knocked her car into the ditch. I got out of my car, and as she got out of her car I grabbed her. I pulled her across the road into some bushes. She was wearing pedal pushers, grey looking. She kept fighting me, and I hit her in the face, knocking her down. She kept hollering for help. Then I was afraid someone would hear her so I choked her. Then I tore her pedal pushers off. She was in her monthly period. She had a Kotex on. I pulled that off of her and forced her to have intercourse with me. When I finished I walked back to where the car I was driving was parked. I could not get my car started. It would not crank. So then I realized I was in trouble, and I ran through the woods to

Mr. Walter Hopkins' place at Toledo, a distance of about ten miles. Some colored boys told me that there was a lot of people and dogs hunting someone. These colored boys went to Mr. Stokes' and told him where I was, at the home of a girl named Marguerite. Mr. Stokes and another white man came and picked me up and carried me to the Sheriff. The pants and shorts I was wearing had blood on them.'

"This statement is made freely and voluntarily in the presence of Sheriff Lee, Ware County, Georgia, Chief Johnson, Chief of Ware County Police, Dudley Jones, Deputy Sheriff, Ware County, Georgia, and B. C. Worley, Constable 1231st District of Ware County, Georgia.

I have been informed of my legal rights by Sheriff [fol. 39] Robert E. Lee that I did not have to make any statement whatsoever, knowing that this statement can be used against me in a court of law.

I have had this statement read to me, which consists of four pages, which is a true and correct statement made by me."

"Witness: Robert E. Lee, Sheriff of Ware County, B. E. Johnson, Chief of Ware County Police, Dudley Jones, Deputy Sheriff, B. C. Worley, Constable."

Q. Who is it signed by, Sheriff? It is signed?

A. Yes, sir, signed by Isaac Sims.

Q. Is that the defendant over here?

A. Yes, sir.

Q. Did you see him sign it?

A. Yes, sir.

The Solicitor General: He's with you.

Cross-examination.

Q. (By the Defendant's Attorney) Now, Sheriff Lee, this statement here says, "I was driving down the St. George highway." Then there is something that is scratched out. "I drove up behind a white woman driving a new looking car, color white."

Is that correct?

A. That's correct.

Q. It says, "I was driving down the St. George Highway." Is that right?

A. That's the statement he made.

Q. And it's all written on your stationery? Is that right?

A. Right.

Q. And there are some words that were crossed out? Is [fol. 40] that right?

A. One word crossed out there was "approx."

Q. And another word is crossed out down there? Is that right?

A. The word crossed out down here is "lady's".

Q. And there's another word that's crossed out, isn't it?

A. Well, that's not a word there.

Q. But it is crossed out, whatever it is?

A. Well, that's not a word.

Q. But it is crossed out, isn't it?

A. Right.

Q. All right. Now, that's page 1, isn't it? Now, the defendant didn't tell Mr. Jones to cross it out, did he?

A. That's how come it crossed out.

Q. He told him to cross it out?

A. It was read back to him.

Q. And the defendant said, "cross it out?"

A. Right.

Q. What about down here where there is no word?

A. Down there?

Q. Down here at the bottom of the page.

A. Well, there wasn't supposed to be a word there.

Q. The defendant didn't tell him to cross out any word that wasn't supposed to be there, did he?

A. Well, I don't know about that.

Q. So, these corrections down here, they are not initialed by the defendant, are they?

A. You notice here—you see this "approx." and "approx" is marked, and "about" out in. He said "about". "Approximately" and "about" mean the same thing. [fol. 41] Either word would have been all right in there, but he used the word "about".

Q. He didn't initial that change, did he?

A. No.

Q. And originally it was put up there "in color," wasn't it, and that was crossed out?

A. Where is that?

Q. See right here. See where that "approx" is crossed out there are two crossed out words.

A. Well, it's stated "1953 or 54 Bel Air Chevrolet, brown and white in color"——

Q. The "color" is crossed out, isn't it?

A. Right. And the "white" is still on there.

Q. But the "color" is crossed out?

A. Right.

Q. Now, when the defendant said that he was at the home, in this statement, of a girl named Marguerite?

A. Right.

Q. Are you sure it wasn't "Margie?"

A. That's the word he gave.

Q. And you are sure that he gave the word "Marguerite?"

A. Right.

Q. And not "Margie?"

(No response)

Q. Now, I notice the statement on the last page, which is the fourth page, isn't it?

A. Right.

Q. And it said, "I have read"—and that's crossed out, isn't it?

A. How come that crossed out, he didn't read it, and the words "I have read"—the word "read" is marked out, and [fol. 42] "I have had this statement read to me."

Q. The word "read" was written in there before you found out he couldn't read?

A. Well, that's how come that marked out—because he couldn't read. It had to be read back to him.

Q. I'm asking you a question now——

A. (Interposing) That word would have been in there if he could have read it.

Q. Now, Sheriff Lee, the word "read" is crossed out, isn't it?

A. Right.

Q. You crossed that out after you learned that he couldn't read, didn't you?

A. Well, if he could have read the word would have been left on there. He would have read it instead of having it read back to him.

Q. But it was crossed out after you learned that he couldn't read?

A. I don't know—I still don't know whether he can read or not.

Q. But you know that is crossed out—"I have read!"

A. That is crossed out.

Q. You go along, and it says, "I have had this statement read to me, which consists of four pages, which is a true and correct statement made by me."

Now, there are only three pages of statement?

A. There are four pages there.

Q. You include the last page?

A. There are four pages you've got in your hand there.

Q. But the last page only says, "I"—

A. (Interposing) That's part of it.

[fol. 43] Q. All four pages are part of this statement?

A. There are four pages of it.

Q. Was this word "read" stricken out before the rest of the sentence was written out?

A. I just stated a minute ago that if he had read the statement himself that would have stayed in there.

Q. Yes, sir; I understand that. I'm clear on that, now, but what I'm trying to get clear on now was the word "read" stricken out by Mr. Jones before the rest of the sentence was written out.

A. I don't know about that.

Q. Is that why there are two "reads" in the sentence?

A. How is that?

Q. There are two "reads" in the sentence—one is stricken out.

A. Well, if he had been able to read the statement that word would have been in there.

Q. Now, did you strike the word "read" out after the entire statement was written out?

A. I don't recall.

Q. Did you strike it out before or after the defendant signed it?

A. It was all stricken out just like you've got it now whenever he signed it. He signed each page.

Q. So, before this statement was written out completely you knew that he couldn't read?

A. Except what he told me.

Q. And that accounts for the "have read" being stricken out?

A. I still don't know whether he can read or not. I just take his word for it.

Q. You believed him when he said it, didn't you?

A. Just what he told me was put down.

[fol. 44] Q. Now, the substantive part of this statement consists of three pages, doesn't it?

A. That's right.

Q. And the fourth page is only a formal part of the statement? Isn't that right?

A. Right.

Q. And it says on that, "I have had this statement read to me, which consists of four pages, which is a true and correct statement made by me"

A. There are four pages.

Q. Including this page right here?

A. That's right.

Q. Now, Mr. Sheriff, what time did you call on the defendant to come from the jail?

A. I really don't know.

Q. About what time?

A. Well, if I was to make a guess—I really don't know what time it was.

Q. Was it in the morning or in the afternoon?

A. It was in the afternoon—at night—the first part of the night.

Q. Was it after 6 o'clock?

A. I couldn't say.

Q. Now, let me ask you this, Sheriff Lee: Were you called by telephone?

A. I was either called on my radio or either on the telephone. I don't recall which it was.

Q. Does the radio hook up and connect with your house?

A. How is that?

Q. Does the radio hook up or connect with your house?

[fol. 45] A. No.

Q. If you were called by radio does that mean that you were in your car?

A. Right.

Q. Do you know now whether you were called by radio or called by telephone?

A. I couldn't say.

Q. What's your best recollection?

The Solicitor General: He's already told him he didn't know.

The Court: All right.

Q. (By the Defendant's Attorney) Let me ask you this, Mr. Lee: Is it your testimony that you were called at home or in your car?

A. I didn't say I was called at home and I didn't say I was called in my car. I said I had been called on one of the two.

Q. Do you know which one?

A. I don't know.

Q. Would your testimony be the same if I told you that Mr. Jones, Dudley Jones, testified that he telephoned you at home?

A. Well, if he said he called me at home, If I was at my house when he called me, that's probably correct, because I don't recall it.

Q. Now, do you recall testifying in court, in October, 1963?

A. Yes.

Q. And do you recall being asked this question by Mr. Hayes: "Question: Now, were you called down to your office by one of your officers?" "Answer: Yes, sir, by radio."

A. Well, that could be correct. I just stated by radio or either by telephone.

Q. So, Mr. Jones was in error, then?

[fol. 46] A. I wouldn't say. I will say now like I did a minute ago, that I was called by telephone or either by radio.

Q. Now, prior to that time that you were either called by radio or by telephone did you know anything about this case?

A. Except what little bit I heard on the radio.

Q. You mean on the news radio?

A. On the car radio.

Q. The car radio?

A. Yes.

Q. You mean you received the signal on the car radio?

A. Right.

Q. But, before you came down to the jail house you had some knowledge that this offense had been committed? Is that correct?

A. What little I'd heard on the radio.

Q. And you know that the defendant, Isaac Sims, had been brought to the jail?

A. I knew he was in Ware County jail.

Q. And you got that over the radio?

A. Well, I wouldn't say whether I got that part over the radio or found it out there at the jail.

Q. But you do know that radio signals were being sent by whom?

A. Well, I couldn't say who. There were several officers using the radio. I couldn't tell you which.

Q. Did you learn about this in the afternoon of April 13th or in the evening?

A. It was late in the afternoon.

Q. Was this before 6 o'clock?

A. I couldn't say what time it was.

Q. Did you have any conversation with Sheriff Sikes?

A. Yes, I did.

[fol. 47] Q. Was that conversation prior to the time you went to the jail?

A. I talked with Sheriff Sikes from the jail.

Q. From the jail?

A. Yes.

Q. You hadn't talked with him before that?

(No response)

Q. You talked with Sheriff Sikes before you took the statement?

A. Right.

Q. You knew that Sheriff Sikes had sent the prisoner up to the jail for safe keeping, didn't you?

A. I knew that he was sent up to the Ware County jail. I knew he was in the Ware County jail.

Q. Do you remember testifying here in October, 1963?

A. Yes.

Q. Do you remember this question being asked you: "Why did you have this defendant in your jail, Sheriff?"

"Answer: Sheriff sikes sent him up for safe keeping."

"Question: For safe keeping?" "Yes".

So, you knew he was in there for safe keeping?

A. That's right. I knew he was in there.

Q. And you were asked another question: "What do you mean by safe keeping, Sheriff?" And your answer was: "Well, usually, when something like this happens it is better for a prisoner to be kept in a different county."

Was that your answer?

A. That's correct.

Q. And the next question was: "For what purpose?" "Answer: Well, I think maybe in this case Sheriff Sikes' jail wasn't sufficient for one reason." And then you were asked: "In what way? Do you know why it wasn't sufficient?" "Well, I wouldn't know to that extent."

Do you remember being asked that in October, 1963?

"Now do you know, Sheriff, whether or not at the time the prisoner arrived at your jail until this statement was taken whether he was visited by anyone? And your answer was, "Not as I know of."

And you testified earlier that he was not represented by a lawyer, did you?

A. That's correct.

Q. You knew that the sheriff, Mr. Sikes, wasn't looking for anybody else for this offense, didn't you?

The Solicitor: Now, your Honor, I object to the question as being a conclusion. He couldn't possibly know what Mr. Sikes was doing.

The Defendant's Attorney: Well, Your Honor, he talked with Mr. Sikes.

The Court: Well, I think he can ask him if he knew.

Q. (By the Defendant's Attorney) Do you know whether or not Mr. Sikes—Sheriff Sikes—was looking for anyone else?

A. I really don't know.

Q. But you had talked to him prior to taking the statement?

A. Right.

Q. Now, you didn't read the statement back to him yourself, did you?

A. Mr. Jones read it back.

Q. Now, you made no effort prior to the time you took

this statement to bring Isaac Sims before a Justice of the Peace or other magistrate did you?

A. I did not.

Q. You had no warrant for the arrest of the defendant, did you?

[fol. 49] A. I don't recall whether there was a warrant there at the time or not. I wouldn't say whether there was a warrant or there was not.

Q. You had no knowledge of the offense and the manner in which it had been committed other than what you got over the radio?

Is that correct?

A. Just what little I heard over the radio and what Isaac told me in the statement.

Q. So, as the time the statement was taken all of the knowledge you had about the offense was a matter of hearsay? Is that correct?

A. From the statement Isaac gave me I knew more about it than I did before.

Q. All right, then, let me ask you this question: Just prior to the time you took the statement the only knowledge you had about the offense was hearsay?

A. Right.

The Defendant's Attorney: Your Honor, we have terminated the examination, and we move that the statement that was read into the record be quashed, and that the jury be instructed to disregard the statement, the grounds being that it was not made in compliance with the 4th, 5th and 6th Amendments to the United States Constitution as made applicable to the several states by the 14th Amendment thereto, and by virtue of Article 1, Paragraphs 3 and 5 of the Constitution of the State of Georgia of 1945.

We move on constitutional grounds, your Honor, that all testimony relative to the statement and the statement itself be excluded from the evidence and that the jury at this time be instructed to disregard the statement.

[fol. 50] The Court: I will overrule that motion. Go ahead."

Movant avers that the inadmissibility of the statement and the evidence relative thereto is beyond doubt.

Because, as movant contends, the Court illegally and erroneously overruled movant's timely motion to strike the direct testimony of Dudley Jones. The testimony, objection thereto, and the ruling of the Court thereon were as follows:

"Dudley Jones was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Solicitor General) State your name for the record.

A. Dudley Jones.

Q. What position do you hold, if any, Mr. Jones?

A. Deputy Sheriff of Ware County.

Q. Mr. Jones, did you hold that position on the 13th day of April, 1963?

A. I did.

Q. Mr. Jones, were you a deputy sheriff prior to serving in Waycross.

A. I was.

Q. What county were you a deputy sheriff in?

A. Charlton County.

Q. Mr. Jones, do you know the defendant, Isaac Sims, Jr.?

A. I do.

Q. Do you see him sitting in the courtroom?

A. I do.

Q. Will you point at him, please?

[fol. 51] (the witness points)

The Solicitor General: Let the record show that he's pointing at the defendant.

Q. How long have you been knowing Isaac Sims, Jr.?

A. Oh, twelve or thirteen or fourteen years, I guess.

Q. Now, Mr. Jones, did you see Isaac Sims, Jr., on the 13th day of April, 1963?

A. I did.

Q. About what time of the day or night did you see him?

A. Around 6:30 in the afternoon.

Q. Where did you see him?

A. In the Ware County jail in Waycross.

Q. When you saw this defendant, Isaac Sims, Jr., did you say anything to him or did he say anything to you?

A. He spoke to me.

Q. Where was he at the time?

A. He was in a cell on the third floor of the Ware County jail in Waycross.

Q. What did he say to you, if anything?

A. He said, "He, Mr. Dudley, Are you working up here?" I said, "yes".

Q. Now, where was he at that time?

A. He was in a cell on the third floor of the Ware County jail, Waycross.

Q. And what did he say then, if anything? What did you say to him and what did he say to you?

A. I asked him what he was doing up there, and he proceeded to tell me.

Q. Now, before he proceeded to tell you did you promise him anything to tell you anything?

[fol. 52] A. I did not.

Q. Did you threaten him in anyway?

A. I did not.

Q. Was anybody else present?

A. No one.

Q. Was he offered any hope of reward?

A. He was not.

Q. Was he induced by you in any manner to make a statement?

A. No.

Q. Was he in any fear of injury anyway?

A. No.

Q. Was the statement made voluntarily?

A. It was.

Q. What did he tell you then, Mr. Jones?

A. He said he got in trouble with a white woman in Folkston, Georgia.

Q. Did he tell you who it was?

A. No, he didn't tell me that.

Q. Did he tell you what kind of trouble?

A. Yes.

Q. What did he say?

A. He said he raped a white woman in Folkston.

Q. Now, what happened after then? What did you say to him?

A. I asked him if he wanted to make a statement to that effect, and he said he did.

Q. Now, about what time of the day or night was that?

A. Oh, it was probably 6:30. I was putting some prisoner in jail at the time.

Q. Did you suggest who to make a further statement to or what?

A. Well, I asked him did he want to make a statement to [fol. 53] the sheriff in regard to this, and he said he did.

Q. Did you make arrangements for it at his request?

A. I did.

Q. And who was the sheriff of Ware County at that time?

A. Sheriff Robert E. Lee.

Q. Is he still sheriff now?

A. He is.

Q. And did you make that arrangement for Sims that he had requested?

A. I did.

Q. Did you take him before the sheriff to make that arrangement?

A. Yes, sir, he was carried before the sheriff.

Q. About what time was he carried before the sheriff to make a statement?

A. 10:30 the same night.

Q. And where was this?

A. It was in the interview room on the first floor in the Ware County jail.

Q. Is that the place you customarily interview prisoners?

A. Yes, sir.

Q. Now, who was present?

A. Sheriff Robert E. Lee, B. C. Worley, Constable, 1231st District, and Chief Estis Johnson, Ware County police.

Q. Mr. Jones, at that time did he make a statement?

A. He did.

Q. Was it reduced to writing?

A. It was put in writing.

Q. At that time did he make the statement voluntarily?

A. He did.

Q. Did you or anyone else there—

[fol. 54] The Defendant's Attorney: (Interposing) I object to that your Honor. He is leading the witness.

The Court: All right, don't lead the witness.

Q. (By the Solicitor General) Did anybody offer him anything to make a statement?

A. No, sir.

The Defendant's Attorney: We move that the answer be stricken. That's leading also.

The Solicitor General: The Code sets out what questions to ask.

The Court: Well, ask him the statutory questions.

Q. (By the Solicitor General) Did anybody offer him anything to make a statement?

A. No.

Q. Was he threatened in any way?

A. No, he was not.

Q. Was he promised any hope of reward?

A. No.

Q. Or the remotest fear of injury put to him?

A. No, sir.

Q. Mr. Jones, who was the presiding officer there?

A. Sheriff Robert E. Lee.

Q. Who was in charge?

A. Sheriff Robert E. Lee.

Q. And you said this statement was reduced to writing—now, who reduced it to writing?

A. As he dictated it to me I copied it down.

Q. And when you took it down what happened to the statement then? Did he read it or what happened, if anything?

[fol. 55] A. He told me he could not read, and I read it to him.

Q. And after you read it to him was the statement signed?

A. It was signed.

Q. And when was it signed?

A. Upon completion of it. It started about 10:30, and it took about thirty minutes, maybe, or thirty-five. Somewhere in that neighborhood.

The Solicitor General: I will ask the Court Reporter if he will mark this "Exhibit No. 2" for the State.

(The document referred to was thereupon marked for identification, "State's Exhibit 2").

Q. (By the Solicitor General) Mr. Jones, I hand you Exhibit No. 2 for the State. Would you examine State's Exhibit No. 2? What is that?

A. It is the statement that was given to me by Isaac Sims on 4-13-63 at 10:30 P.M.

Q. Was that statement signed?

A. It is.

Q. Who signed it?

A. Isaac Sims.

Q. Is this Isaac Sims over here, the defendant, who signed it?

A. It is.

Q. Now, who was present when that was signed?

A. Robert E. Lee, Sheriff of Ware County, B. E. Johnson, Chief of the Ware County Police, and B. C. Worley, Constable of the 1231st District, and myself.

Q. And I believe you said Sheriff Lee was in charge?

A. Yes, he was.

Q. And it was turned over to him?

[fol. 56] A. That's right.

The Solicitor General: He's with you.

The Defendant's Attorney: Your Honor, we move to strike the witness' testimony on the ground that the testimony is incompetent, in that it does not support the requirements of the due process of law of the 14th Amendment to the United States Constitution, and of Article 1, Section 3, of the Constitution of the State of Georgia of 1945, in that the Statutes of Georgia—the Code—which permits a witness to testify as to the four or five leading questions there as to whether or not there was any hope or fear or any reward, or the slightest hope of injury or benefit, and that sort of thing, are inadequate to lay the constitutionally required foundation for the introduction of an extra judicial statement made by a defendant who purportedly made such statement while in the custody of police officers. For that reason I move the witness' testimony be stricken.

The Court: I will overrule that motion.

Movant avers that the error or overruling said motion is beyond doubt.

3.

Because, as movant contends, the court erroneously charged the jury as follows:

"I charge you further, gentlemen, that when testimony in the nature of an alleged confession is offered it is for the jury to determine whether or not such alleged confession was, in point of fact, made or not; and if the jury believe there was a confession, then and in that event the following principles of law would govern the jury in determining the weight of such alleged confession:

[fol. 57] All admissions shall be scanned with care, and confessions of guilt shall be received with great caution.

A confession alone, uncorroborated by other evidence, will not justify a conviction.

To make a confession admissible it must have been made freely and voluntarily, without being induced by another by the slightest hope of benefit or the remotest fear of injury.

If the jury should believe that a confession was induced by another by the slightest hope of benefit or the remotest fear of injury, then and in that event, gentlemen, it would be the duty of the jury to disregard that testimony.

The amount of corroboration to a confession which has been freely and voluntarily made to authorize a conviction on such confession is a question for the jury."

Movant contends, that the Court by the above recited portions of said charge illegally and erroneously submitted the issue of voluntariness of the alleged confession for determination by the jury in violation of the Fourth, Fifth, and Sixth Amendments, Constitution of the United States as made applicable to the State of Georgia by virtue of Section 1, Fourteenth Amendment thereto and Article I, Paragraph 3, Constitution of the State of Georgia of 1945.

Moreover, movant contends, that the above recited portion of the Court's charge was, and is, wholly inadequate to have insured a reliable and precise determination of the voluntariness of the alleged confession, including the reso-

lution of disputed facts upon which voluntariness or the lack of voluntariness depended to satisfy the Fourth, Fifth, and Sixth Amendments, Constitution of the United States as made applicable to the State of Georgia by virtue of Section 1, Fourteenth Amendment thereto and Article I, [fol. 58] Paragraph 3, Constitution of the State of Georgia of 1945, in that:

(a) the above recited instructions leave it entirely to the impressionistic determination of the jury whether a voluntary confession was in point of fact made without delineating any constitutionally adequate standards or definitive criteria upon which and by which the jury could resolve said issue;

(b) said instructions set out no constitutionally adequate criteria or definitive standards by which the jury could have reliably determined whether the alleged confession, if made, was or was not "induced by another by the slightest hope of benefit or the remotest fear of injury".

4.

Because, as movant contends, the court erroneously charged the jury as follows; " . . .

"And then, gentlemen, in the event you find the defendant guilty, you may fix his punishment at not less than so many years, which could not be less than one, and not more than so many years, which could not be more than twenty, just since the minimum is not less than one and the maximum not more than twenty. For illustration, and for illustration only, you could fix his punishment at ten years, or five years, or twenty years, or at one year, or seven years, just any figure between one and twenty years."

Movant contends, that the illustration given by the Court as to the term of imprisonment in the event that the jury found movant guilty but provided that movant be imprisoned prejudices the movant by leading "the jury to believe that it could only fix the term of imprisonment at any figure [fol. 59] between one and twenty years, where in fact and law the jury could fix a minimum and maximum term."

WHEREFORE, movant prays that his additional grounds for his motion for new trial be inquired into by the Court, approved and allowed and that movant be granted a new trial.

**Howard Moore, Jr., William H. Alexander, 859½
Hunter Street, N.W., Atlanta, Georgia 30314,
Attorneys for Movant.**

ACKNOWLEDGEMENT OF SERVICE [omitted in printing]

ORDER

The above and foregoing Amended Motion for New Trial and the several recitals of facts in said grounds thereof are hereby approved and made a part of the record in said case and ordered filed.

This 15 day of January, 1965.

**Ben Hodges, Judge, Charlton Superior Court, Way-
cross Judicial Circuit.**

[fol. 60] [File endorsement omitted]

**[fol. 61] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA**

OCTOBER TERM, 1964.

No. 1488

THE STATE

vs.

ISAAC SIMS, JR.

INDICTMENT FOR RAPE

Transcript of evidence on special pleas and motions—

October 7, 1964

PROCEEDINGS

The Court: You may proceed.

COLLOQUY BETWEEN COURT AND COUNSEL

The Solicitor General: Your Honor, we call the case of the State of Georgia versus Isaac Sims, Jr., who is charged with rape. The State of Georgia is ready.

The Defendant's Attorney: Your Honor, the defendant announces ready with special pleas and motions.

The Court: All right.

The Solicitor General: Would you like to join the issue or hear the special pleas first?

The Defendant's Attorney: I would like to hear the special pleas first.

The Court: You may proceed, then.

The Defendant's Attorney: Your Honor, we hand up to the Court several special pleas that we would like to be heard. We serve the Solicitor.

In addition to those, your Honor, we have an oral motion that I would like to make as soon as the Court has examined the pleas.

The Solicitor General: I'm sorry—I didn't hear the last statement.

The Defendant's Attorney: We have an oral motion we

would like to make as soon as the Court has examined the pleas.

Your Honor, the prospective jurors are in the court room and the witnesses are in the court room, and I would like for them to be removed from the court while these matters are being argued.

[fol. 62] The Court: All right, I will do that. Let all the jurors go downstairs.

(People thereupon left the court room.)

The Court: Are all the jurors out now?

The Sheriff: They are all out.

The Court: I believe they are.

The Solicitor General: As a matter of information, are you planning on the motion to change the venue to be argued?

The Defendant's Attorney: Oh, yes.

The Solicitor General: Would you like to make an opening statement as to what your contentions are?

The Defendant's Attorney: Your Honor, I think my contentions are fairly well stated in my motion to change venue, and I need not repeat them.

The Court: All right.

The Defendant's Attorney: And we contend that there is an overbearing atmosphere of hostility toward this defendant in this particular county.

We further contend that the circumstances surrounding the incident are such as to give rise to very strong feeling against the suspected perpetrator of such an offense.

In addition, we contend that the venire of the panel of jurors which has been brought into court to try this case is unreasonably small. As a matter of fact, we allege in our motion that approximately 110 persons were called for prospective service in this case, or for the week of October, rather; and now the number of jurors have been narrowed to approximately 99, which is eleven less than we anticipated.

We allege additionally in our motion that many of [fol. 63] these prospective jurors are related in some fashion, by blood, marriage or by long standing ties of association and friendship with members of the law en-

forcement officers involved in the case and with court officials who would necessarily be involved in the case.

We allege that the prosecutrix, Miss Nola Jean Roberts, is believed to be the daughter of Mrs. Lonnie Roberts, the postmaster out at St. George, and that as postmaster, or postmistress, if you'd rather, she knows most of the people in this county and most of the people in the county know her, and have some reason for knowing about the facts of the case.

We allege that there are only 2,656 persons in the county who are above the age of twenty-one and perhaps eligible for jury service. We address the matter to the sound discretion of the Court as to whether the venue should be changed. In the alternative we ask the Court to take such other steps as would insure this defendant a trial before an impartial jury where there is not likely to be the hostility and the overwhelming emotionalism that there is in this particular court. Further, we think that the motion is very timely and should be very carefully considered so as to protect the rights of this defendant. The Court is familiar with what happened in the last case, in that this defendant was convicted, and he was the first person in this county since 1913 for the offense of rape and sentenced to death. The Court is also aware of the circumstances surrounding the fact that no appeal was taken in this man's case, and Chief Justice Duckworth said this was a denial of his rights; and we think this motion is well founded and that the ends of justice would be better served if this case [fol. 64] should be moved to Ware County or some other county where the Court feels the defendant could receive a fair and impartial trial.

The Court: All right.

The Solicitor General: Your Honor, we would move to dismiss his motion because, in the first place, what he states—the majority of the facts, there just simply isn't anything to it. It's not so.

Now, in his motion, I'm very interested in Paragraph 5 in that it is absolutely false, and counsel knows it's false because he knows the facts. He knows that's not true. I ask that the whole thing be dismissed. Now, we have a party here that lives in one edge of the county, some twenty something miles from Folkston, and we admit they are good

people. There is not outburst of any violence here today. Nobody has been threatened, the atmosphere is peaceful. The lawyers have certainly been treated nice here today, the defendant has been treated nice, and we've had no demonstrations. As a matter of fact, there's no people in general hanging around the court house. It's completely orderly. It's quiet, and I've never been in a court room where the atmosphere, where the attitude, and where the people were more determined to give a man a fair and impartial trial, and for that reason I ask that it be dismissed.

The Defendant's Counsel: The Solicitor says they're fair and impartial. That's something to go into. I ask the Court to take notice of the fact that present in the court room now there are at least seven members of the State Patrol, all of whom are armed, which is routine, and in their uniforms, and there are at least one, two, three, four deputy sheriffs in this county and from Ware County; and, [fol. 65] in addition to that, there are one, two, three deputies who've just been sworn for the purposes of this particular trial in the court room; so we have a total of at least thirteen to sixteen law enforcement officers who are present in the court room, and we think this presents an air of somewhat hostility, not that we mean by that that the law enforcement officers are hostile, but we mean that there may be persons in the community who are hostile, and we ask that the Court take particular notice that the defendant has been housed and lodged in adjoining Ware County prior to the first trial, and he's been there since the reversal until the present time.

The Solicitor General: Your Honor, in reply to that I'd like to state that counsel knows of his own knowledge that a number of these officers that are here present have been summoned to this court as witnesses because he heard me call some of them as witnesses, and counsel himself called several of these officers present as his witnesses to appear in this court. The majority of these officers appear because they have been summoned by me for the State or by counsel for the defendant. They have no choice but to be here. They are not here, all of them, because the Court sent for them, except by summons to appear as witnesses on behalf of the defendant or on behalf of the State, and the Court, I know, will take judicial notice that the officers, with the

exception of some of the State Patrol, are the routine amount of officers that are kept here.

Now, the State Patrol Troopers did bring the defendant here, and they are in here for safety in the court room, although there's no need for any safety. Just the same, they brought him here because it's the policy of the Court [fol. 66] to have officers in the court room to make sure everything is peaceful and quiet, which it is today. It is completely peaceful and quiet, no interruptions, no demonstrations, and no nothing. Everything is absolutely peaceful today.

The Defendant's Counsel: Your Honor, I'd like for the Court to also note something, which is unusual, that most of them are in uniform, and each person in the court room who is a bailiff is wearing arms, and these deputy sheriffs are wearing arms, and we say this is more than just routine, and all the officers in the court room are not called as witnesses. Certainly, they are standing in positions now that suggests they are serving functions other than as witnesses.

The Court: Are you through?

The Solicitor General: Yes, We move that his motion be dismissed.

The Defendant's Attorney: Your Honor, I would like to put up some evidence, if I may. We call to the stand the Solicitor General, Mr. Dewey Hayes.

DEWEY HAYES was thereupon called as a witness in behalf of the defendant, and, having been duly sworn, testified as follows:

Direct Examination.

Q. (By the Defendant's Attorney.) Will you state your name, please?

A. Dewey Hayes.

Q. What is your position, Mr. Hayes?

A. Solicitor General of the Waycross Judicial Circuit, which includes Charlton County, Georgia.

Q. How long have you been Solicitor General?

A. Eight years.

[fol. 67] Q. How many counties are in the Waycross Judicial Circuit?

A. Six.

Q. Will you name those counties, please?

A. Charlton County, Ware County, Coffee County, Brantley County, Pierce County and Bacon County.

Q. What is the smallest county in that circuit?

A. Charlton and Brantley together are the two smallest. I don't know what the census is in these two counties.

Q. There are at least four other counties in this circuit that are larger? Is that correct?

A. Yes, there are at least four that are larger.

Q. When you say larger, you have reference to population?

A. Oh, yes. Charlton and Brantley would be the two smallest counties.

Q. Now, you were Solicitor General in 1963?

A. That's correct.

Q. And you were the Solicitor General who presented the indictment in Case No. 1394 to the grand jury? Is that correct?

A. Yes, I represented all of them.

Q. And you were the Solicitor who tried the case of the State of Georgia against Isaac Sims, Indictment 1394? Is that correct?

A. That's correct.

Q. And you were present in the court room—as a matter of fact, you conducted the trial of that case?

A. That's correct, along with Bill McQueen.

Q. Would you state for the record where he is?

A. Mr. McQueen was a very prominent and able attorney in Folkston, Georgia, who is now deceased.

[fol. 68] Q. As a matter of fact, he was the only other attorney in the State—in the county?

A. He was the only other attorney with a full time practice at that time in Charlton County.

Q. There were some other attorneys who practiced here?

A. As I recall, Mr. Carroll Russell had previously practiced in this county, but I believe at that time Mr. Russell had just moved to Blackshear. I think that's correct.

Q. When you refer to Mr. Carroll Russell, you have ref-

erence to the attorney who represented Isaac Sims in the first trial? Is that correct?

A. Well, he is the attorney who represented him. That's correct.

Q. And do you know of your own knowledge and information that a motion for new trial was not filed in that case, don't you? Is that right?

A. I know that I wasn't served with one. I'll answer it that way.

Q. You know that no appeal was taken in that case?

A. Well, yes, I know that, actually.

Q. And that was because no motion for new trial was filed? Is that correct?

A. I don't know. I represent the State and I do not know what the defendant's attorneys did or didn't do, because you know under the law if they file some type motion, whatever they do they do not tell me—they serve me with a copy of it, and I did not receive a copy.

Q. So it is reasonable to conclude that a motion was not filed?

A. Well, it is reasonable to conclude that, yes.

[fol. 69] Q. And you also know that a new attorney was not appointed to appeal the case? Is that right?

A. I do not know that.

Q. You know that no appeal was taken? Is that right?

A. There was no appeal taken to my knowledge. That's right. To my knowledge there was no appeal taken.

Q. And you are aware of the opinion of the Supreme Court of Georgia?

A. Yes.

Q. You know of their holding in that particular case?

A. Their holding was, as I understood it (and I have it lying over there), is that they created a new rule—a new law that had never been used in Georgia that said that the defendant's counsel in a case of this type must appeal, and they say they didn't have any law to go by. In essence, that's what they say. I can read it to you. I've got it over there.

Q. But you know that no appeal was taken and you know the holdings of the Supreme Court.

A. Oh, yes. They say it should have been appealed. In essence that's what they said.

Q. Now, you at no time approached the Court while that case was pending here—the conviction—indication that no appeal had been taken?

A. I do not recall ever discussing it with the judge because, as I said, generally speaking—well, as a matter of law, lawyers have thirty days to file a motion for a new trial, and in a great majority of the cases they will serve me on the thirtieth day. I would say ninety per cent. of my cases are served on me on the thirtieth and last day. In this particular case the thirty days expired without me [fol. 70] having been personally served with a copy of a motion for a new trial.

Q. And you never mentioned that to the Court at all, did you?

A. Now, I do not recall ever discussing it with the Court until possibly after it was over. I had no reason to discuss it with the Court, because, as I said, ordinarily I would not get a motion for a new trial—a copy of it until the twenty-ninth or thirtieth day.

Q. Because you don't recall, it's likely that you never did discuss it with the Court? Is that right?

A. I don't believe I did discuss it with the Court.

Q. And did you write a letter to the Board of Pardons and Parole in this case?

A. I don't know whether I did or not. Have you got a copy of it?

Q. I asked if you remember writing it?

A. I do not remember writing them, but if you have a copy of it I might refresh my memory.

Q. Do you remember having appeared before the Pardon and Parole Board?

A. I did not appear before the Pardon and Parole Board. I'm not going to say that they didn't contact me, but I did not appear before the Pardon and Parole Board or any member of the board. I might have talked to some officer of it, but I have not talked with the board that I recall. I know I have not been to Atlanta to appear before the Pardon and Parole Board, and that's where they have hearings.

Q. But you know that on the sixth day of November, 1963, which was less than thirty days after the conviction

in this case that the Pardon and Parole Board refused to commute sentence, don't you?

[fol. 71] A. No, I don't know that. I don't have any dealings with the Pardon and Parole Board.

Q. You deny that you were served with a copy of their order denying commutation?

A. I wasn't served with a copy. It's possible I could have got a copy in the mail as a routine matter, but I don't recall it.

Q. Did you get a copy in the mail, then?

A. I do not recall it. I wouldn't say I didn't get a copy, but if I did I don't remember it. I don't remember the Pardon and Parole Board ever sending me a copy of anything of that nature.

The Defendant's Attorney: Would you mark this as "Defendant's Exhibit D. 1", please?

(The paper referred to was thereupon marked for identification "Defendant's Exhibit 1".)

Q. Mr. Hayes, I show you a copy of defendant's Exhibit D 1, a certified copy of the order denying commutation in the case, and ask you to examine it.

A. Yes, I've examined it.

Q. Does that refresh your memory?

A. I don't remember it. I don't believe I got a copy of that.

Q. Do you see the certification there?

A. Yes, I see the certification, certifying from the Clerk of the Superior Court of Charlton County that this is a true and correct copy of some paper down in the Clerk's office.

Q. Of the commutation?

A. Yes.

Q. So that is on file in the Clerk's office. Is that correct?

A. Now, I can't tell you what is on file in the Clerk's office. I don't know. You'll have to ask the Clerk about that.

[fol. 72] Q. Well, let me ask you this: This is certified by the Clerk that it is on file in his office? Is that right?

A. That it's on file in his office now, yes. I don't know when it was put there. The only thing that states is that it's on record now.

Q. It's dated the 6th day of November, 1963.

A. Well, I guess you realize I presume that came from Atlanta. If so, it was probably put in the mail that day or the next day and it would probably have taken two or three days to get down here. I don't know.

The Defendant's Attorney: We offer it in evidence, your Honor—Defendant's Exhibit D 1.

The Court: All right.

The Witness: I would like to know what the purpose is. I realize I'm on the stand, but I am still solicitor. It doesn't show a thing in the world. The only thing that paper shows is the Pardon and Parole Board refused to commute his sentence to a life sentence, and that's true. There's no question about that.

The Court: For what purpose do you offer it?

The Defendant's Attorney: If your Honor please, I offer that for the purpose of showing that the Solicitor had knowledge of the fact that no appeal had been taken and the Pardon and Parole Board refused to commute the sentence.

The Solicitor General: Your Honor, I never received a copy or notice or anything else. The only thing it shows, he has a photostatic copy of a paper which was allegedly sent from Atlanta to the Clerk's office here. It doesn't show when it was sent or who sent it or anything about it. [fol. 73] As I explained to him, I don't believe I've ever seen a copy of it before.

The Defendant's Attorney: We'd like to have it in the record, your Honor, as evidence that it was on file in the Clerk's office, and it's record notice and some circumstances of such notice.

The Court: And that the Solicitor had knowledge of it?

The Defendant's Attorney: It's a matter of record, so he has record knowledge of it. It's notice to all the world that it's on file in the Clerk's office.

The Court: All right, I will let it go in.

(The document referred to was thereupon received in evidence.)

The Defendant's Attorney: Would you identify this as Defendant's Exhibit D 2, please?

(The document referred to was thereupon marked for identification "Defendant's Exhibit 2.")

Q. (By the Defendant's Attorney) Were you present in the court room the 9th day of October, 1963, when the Court imposed sentence upon Isaac Sims, Jr., sentencing him to death?

A. Yes, I was present.

Q. And the sentence was to be carried out on November 13, 1963?

A. Yes, I was present—if that is the correct date I was here then.

Q. That's a certified copy of it.

A. All right, I was present.

The Defendant's Attorney: Your Honor, we offer this in evidence.

[fol. 74] Q. (By the Defendant's Attorney) Mr. Solicitor, do you remember appearing in the Supreme Court of Georgia on or about April 13, 1964, if that was the date?

A. I remember appearing when you were present. Let me answer it that way.

Q. Do you remember appearing when the case of Isaac Sims was heard?

A. I appeared in the Sims case.

Q. And do you remember producing to the Supreme Court of Georgia a transcript of the proceedings had at the October, 1963, term?

A. I certainly do remember it, and that's what I said was false in Paragraph 5 that you alleged in there, and I still say it's false, because when I appeared you appeared prior to me and you made the statement that there was not a transcript of it. I followed you and I said there was a transcript of it—that I had a copy of it; that it was filed, was my understanding—I hadn't seen it—it was filed with the Clerk of the Superior Court of Charlton County, Georgia, and that if you would check with the Clerk that you could get a copy of it. I didn't know when it was filed. I had just gotten mine, but I didn't know when it was filed. I knew it was filed. It was available to you, and you could get it. And I told you, furthermore, that if you wanted to that you could get it from the Clerk or you could certainly have a copy of mine. You put in that motion that the judge ordered it, and so on, and that's absolutely false. He did

not. I was not concealed, and he certainly did not order it, and you know that isn't so.

Q. Do you remember appearing at the City Court of Reidsville, Georgia?

A. I do, and at that time I did not have a record of transcript.

[fol. 75] Q. When did you, in fact, see the record of transcript?

A. I do not recall, but it was just before I went to Atlanta, because when I went to Reidsville I did not have a record of it.

Q. You didn't have a record of it?

A. When I went to Reidsville I did not, to the best of my knowledge—I know I didn't.

Q. Had you ordered a record of it?

A. I can't remember prior to that time that I needed one. I wouldn't have ordered a copy of it until I needed it. I don't remember when the first need for it came up, and it would take me a while to get it. When I found out that it looked like we were going to need one then I, of course, asked to get one.

Q. When did you determine that you would need a record of transcript?

A. When did I determine it?

Q. Yes, sir.

A. I determined that when the case was being appealed, when the writ was filed.

Q. You mean the habeas corpus?

A. Yes.

Q. You hadn't made that determination prior to the appeal of the habeas corpus?

A. Prior to that time no appeal had been made to my knowledge. I had no use for the record, and I did not request the record, because I didn't need the record as far as I was personally concerned. I do not ask for a record until I need a record. That's true in all cases.

Q. Now, to whom did you make the request for the record?

A. Who did I make a request to?

Q. Yes.

A. I made the request to the only person you can make [fol. 76] a request to—that's the Court Reporter.

Q. Who is that person?

A. The Court Reporter is Honorable William J. Summerall, Waycross, Georgia.

Q. And you remember at the habeas corpus hearing evidence being introduced from Mr. Summerall as follows: "No motion for a new trial having been filed in the Isaac Sims case tried in Charlton Superior Court, my notes taken in this case have been destroyed. W. J. Summerall, Official Reporter, Charlton County Superior Court, November 23, 1963"?

A. I believe that you put that information in the record, and, as I understand, that's true.

The Defendant's Attorney: Would you mark this as Defendant's Exhibit D 3?

(The document referred to was thereupon marked for identification "Defendant's Exhibit 3".)

Q. Mr. Hayes, do you remember writing me on April 16, 1964?

A. I remember replying to two of your letters, I do not recall the date. I remember replying to your office in response to some question that you asked me on two different occasions. One of those occasions was when you asked to get a copy of the transcript. You wanted to know what it would cost, and so on, and I told you it wouldn't cost you anything—that I couldn't furnish it to you, but you could make your own copy.

Q. Do you remember replying to me in response to a letter that I had written you? Is that correct?

A. On two different occasions that I recall.

Q. Could one of those occasions have been April 13, 1964?

A. Well, I honestly don't remember the date, but I did reply to two of your letters. It could have been on that date. [fol. 77] I just don't remember.

The Defendant's Attorney: Would you mark this, please, Defendant's Exhibit D 4?

(The document referred to was thereupon marked for identification "Defendant's Exhibit 4".)

The Witness: If you will show me a copy of it I'll tell you whether I wrote it or not.

Q. I hand you Defendant's Exhibit D 4, which is my letter directed to you on April 13, 1964.

A. I would presume that I got a letter—I got a similar letter from you to this letter. I can't recall the exact letter, but I would presume this is probably correct.

Q. And in that letter I requested that you send me a copy of the transcript that you exhibited on the oral argument of the case, didn't I?

A. And I sent it to you.

Q. And I show you Defendant's Exhibit D 3, and ask you if that is your letter.

A. Yes, that is where I wrote and told you I would send you a copy and you could make a copy of it and there wouldn't be any charge or anything involved in it, and you'd just have to make your own copy. In essence that's what it says, isn't it?

The Defendant's Attorney: I offer this in evidence now, your Honor.

The Court: What is the purpose of that?

The Solicitor General: Your Honor, I don't see any purpose in it.

The Court: I don't see any purpose in it on a motion to change venue.

[fol. 78] The Solicitor General: He wrote me a letter, and I certainly replied to it, and replying to it the way I thought a Solicitor should, and now he's bringing it up in court.

The Defendant's Attorney: Your Honor, the purpose of the letter is that we made allegations in Paragraph 5 of the motion to change the venue to the effect that the transcript had been made unavailable to us except on the direction of the Chief Justice of the Supreme Court of Georgia, and we offer that as a circumstance to prove the allegations of our Paragraph 5.

The Solicitor General: I object to it unless he can show you the order of the Supreme Court—the Chief Justice. He says that he has that and if he has I want to see it, because I know it isn't so.

The Defendant's Attorney: I'm sure that the Court has practiced before the Supreme Court of Georgia, and the Court knows that minutes are not taken relative to arguments, and this was an order made by the Chief Justice in court.

The Solicitor General: He made the statement to the Court and asked the Court, as I recall, I believe he used the word that he, "impound" it, and Chief Justice Duckworth told him he did not have the authority to do it, and so forth—that he could not do that.

Q. (By the Defendant's Attorney) But he did direct you to make it available?

A. No, he didn't direct me at all. I told him—I says "Now, this is my personal transcript. The original is on record down in the Clerk's office in Charlton County, and he can get it there, or, if he would like to—I'm not going to [fol. 79] be forced into giving him anything, but if he'd like to I'd be glad to give him a copy, but he'd have to make his own. I'm not going to furnish him with a copy. He can just make his own." And he wrote me a letter later on and said he would like to have a copy of it and wanted to know what it would cost. I replied and sent him a copy and told him there wouldn't be any charge—that he could make his own and just return mine, and that's what happened.

Q. The transcript was made from Mr. Summerall's notes? Is that correct?

A. No, I don't know what it was made from. Mr. Summerall sent it to me. I understand that his notes were destroyed, but that in addition to keeping notes, in addition to that, as a safety precaution, as I understand this thing, now, he also takes a recording; whereas his notes which you see him taking were destroyed after thirty days—in all cases he destroys those notes, but that he took the tape, which is not part of his personal notes, but which is an extra precaution for him in case something is—well, it's a second precaution for him that he was able to get a transcript from that. That's my understanding. Now, I don't know. The only thing I can tell you is my understanding. Anyway, I got a copy of it from Mr. Bill Summerall. At least, I got something in the mail that said it was from him, and that's all I can tell you.

* Q. Did you request that he provide a transcript?

A. I certainly did.

Q. And did he provide you with a transcript?

A. I received a transcript in the mail from him,

Q. And you don't have any knowledge whether or not

the transcript was made from shorthand notes or from the phonographic recording, do you?

[fol. 80] A. The only thing I know, my information was that his pen notes he's taking there were destroyed, and that the tape was in such way that he could make a transcript. I didn't see him take them. I don't know, but I see him now. The only thing, I saw him do was taking them down, and later on I got a copy. I don't know, for I didn't see it.

Q. You don't know whether he made the transcript from his notes—his shorthand notes, that is, or from the phonographic recording?

A. The answer is I did not see him making them. I could not positively know.

Q. Now, you know that Miss Nola Jean Roberts is the prosecutrix in this case and she is the daughter of Mrs. Lonnie Roberts?

A. Yes.

Q. And you know that they live in St. George, don't you?

A. I know they live, according to my understanding, about three miles and a half out in the country from St. George.

Q. On the Lonnie Roberts Road? Is that right?

A. I don't know what road it's on. It's a dirt road about three miles and a half in Charlton County from St. George, Georgia.

Q. And you know that Mrs. Lonnie Roberts is postmaster at St. George?

A. Yes.

Q. About how many people are in this county?

A. I don't know what the census of this county is. I'd have to look at the census. I would say it's around five or six thousand people, but I don't know what the census shows. I would estimate six thousand.

Q. Mr. Hayes, I show you a certified copy of the United States Census for the year 1960. Have you examined the [fol. 81] page for Charlton County? Is that the way you pronounce it—Charlton or Carlton?

A. Charlton.

Q. Thank you.

A. I'm looking for it now. You know, the answer to your

question, if you want to read it in the record what it says I won't object to it—whatever the census shows.

Q. It shows that of the total number of persons of all classes over the age of 21 according to the 1960 census, 2,565.

A. You are talking about adults?

Q. Over twenty-one. Do you know Mr. Lewis Crews?

A. Well, I probably do, but—

Q. No. 2 on the jury list.

A. Did he serve on the case?

Q. No, he's on the jury list for the week of October, 1964—the petit jury.

A. Yes, I know him.

Q. Is he related to State Patrolman Crews?

A. Not to my knowledge.

Q. Do you know Mr. G. W. Crews?

A. Yes.

Q. Is he related to Mr. Lewis Crews?

A. Not that I know of.

Q. Is he related to State Patrolman Crews?

A. Not to my knowledge.

Q. Do you know Mr. Julian Crews?

A. Yes.

Q. Now, is he related to the other two Crews I've mentioned?

A. I don't know. I can't answer the question because I don't know.

[fol. 82] Q. Do you know Mr. Jimmy H. Crews?

A. Yes.

Q. Is he related to Patrolman Crews or the other Crews?

A. I don't know.

Q. Do you know Mr. Willie Crews?

A. Yes.

Q. Is he related to any of the other Crews I've mentioned?

A. I couldn't tell you that.

Q. Do you know Mr. Basil Crews?

A. Yes.

Q. Is he related to any of the other Crews?

A. I just don't know. I don't know what their relationship is. Let me answer you that way.

Q. Are you relatively familiar with most of the people in the county?

A. Yes, but I'm not familiar with their kinship.

Q. You live in this county, don't you?

A. No. I live seventy miles north of here.

Q. Douglas, Georgia?

A. Yes.

Q. Do you know Mr. Jerome Crews?

A. Yes.

Q. Do you know Mr. Earl Crews?

A. Yes, a lot of Crews in this county. All fine people.

Q. Do you know Mr. Herbert M. Crews?

A. Yes.

Q. Do you know whether he's related to any of the other Crews?

A. I don't know.

Q. Do you know whether he's related to State Patrolman Crews?

A. Not to my knowledge. I just don't know. I do not know the relationship among the people. Some of them [fol. 83] are related and some of them are not.

Q. Do you know which ones are related?

A. No, I don't know.

Q. Do you know where they live?

A. They live all over Charlton County. Most of them live in this vicinity. Some of them live in St. George, some at Moniac, some of them at Winokur, and some of them at Race Pond. They live all over this county. I don't believe there's many living in the St. George area, though, if that's what you are referring to.

Q. Do you know Mr. Edgar Woolard?

A. Yes.

Q. Is he related to the Clerk of the Court?

A. Not to my knowledge. He could be.

Q. Could he be related?

A. Could be, as a matter of fact, I think he is.

Q. Do you know Mr. or Mrs. D. E. Sikes?

A. Yes.

Q. Do you know whether she was related to the former Sheriff of the County? Who is deceased?

A. I don't think she was. I don't believe so.

Q. But you're not sure?

A. I'm not sure, no. I wouldn't have any way of having that information.

Q. You are familiar with the people on Charlton juries, aren't you?

A. Yes.

Q. Do you know Mr. Eldon Woolard, Sr.?

A. Yes.

Q. Do you know whether he's related to the Clerk of the Court, Mr. Clyde Woolard?

[fol. 84] A. I don't know. I just don't know. He could be. As a matter of fact, I think he is, but I'm not sure. But I would say that he is. I would say again that I do not know the relationship in this county.

Q. You do know that the jury list for the October, 1964, term consists of some 94 names—99 names, don't you? I'll show you the list.

A. Yes, that would be approximately correct.

Q. You know that the movant, Isaac Sims, Jr., was kept in the Ware County jail, don't you?

A. Yes.

Q. And you know that he was kept there from April 13, 1963, until after he was convicted in October of 1963?

A. I don't know the date, but I know that he's been kept over there a portion of the time. I understood he was kept there some and in Reidsville some.

Q. And the reason why he was kept in the Ware County Jail before the last trial was for safe keeping? Is that right?

A. Now, you made that statement. The reason he was kept there, as I understand it, is because they have better facilities. Now, you wrote me a letter about that and I replied to you. That was in one of those letters I said I wrote you, and in the letter I wrote you this—you wanted to know what was being done for his safety.

Q. I'm talking about from April to November.

A. Anyway, the Ware County jail is a modern jail and it has better facilities. The jail in Charlton County, Georgia, is old, it's dilapidated, and it's really not safe to keep any prisoner in it in my opinion charged with any major crime, because they can get out, and for that reason Ware County jail is a modern jail, has more facilities, and they keep State prisoners there, they keep federal prisoners [fol. 85] there, and we kept him there because it had good facilities.

Q. And it's a jail that they can't readily get into also? Is that right?

A. Well, we're not concerned about getting into, because nobody is going to go in there. We didn't want him to get out.

Q. My question is you can't get in that jail as easily as you can get in the Folkston jail? Is that right?

A. No, you couldn't get in that jail very easily, and you couldn't get out very easily, either. We are not concerned with somebody getting in there, because there was nothing to be concerned about, because nobody was going to bother him.

Q. You know that right after this offense occurred there was a large number of persons who gathered out there on the highway near where it happened, don't you?

A. No, I don't know that, but any time something would happen there would be a lot of curiosity seekers looking around. If you have an automobile wreck out there in ten minutes you'd have several people around looking from a curiosity standpoint.

Q. You do know that a car was burned out there in this area, don't you?

A. No, I don't know that.

Q. You heard testimony about it, didn't you, in Reidsville?

A. I believe I heard one was burned, but I don't remember where it came from. I believe I've heard it.

Q. You know the circumstances surrounding the perpetration of an offense in this county, don't you?

A. Oh, yes.

Q. And wouldn't it be one of the circumstances that you know about?

A. What?

Q. The burning of a car.

[fol. 86] A. As I told you, I believe I have heard that a car burned. Not that somebody burned it, but the car burned.

Q. Do you know that soon after this defendant was taken in custody that he was taken to Dr. Jackson?

A. I know he was taken to Dr. Jackson's office. Yes, I know that.

Q. And you know that he was treated by Dr. Jackson, don't you?

A. No, I don't know that.

Q. You never heard any testimony about it?

A. I don't recall any testimony about Dr. Jackson treating him. I recall testimony about Dr. Jackson seeing him, now. I don't say that he didn't treat him. I don't recall it. I recall testimony that he went to Dr. Jackson's office and Dr. Jackson saw him.

Q. You mean he was taken to Dr. Jackson's office?

A. Yes.

Q. And after that he was taken to the Ware County jail? Is that right?

A. That's correct.

Q. And he was brought back to Folkston April 15th, '63?

A. He was taken to Ware County jail on the Saturday night this happened and he got there around first dark. He was brought back over to Folkston the following Monday, and the following Monday he went before Judge Harvey, a Magistrate—Justice of the Peace, which is a routine thing when a fellow is accused of something—he goes before the magistrate, and that's what happened.

Q. And then he was taken back to the Ware County jail?

A. That's right. Then he was taken back to the Ware County jail because they had better facilities in Ware County to keep this man.

[fol. 87] Q. And then he was kept there until he was convicted?

A. Then he was kept there until the trial, and when we tried him we brought him back to Charlton County and tried him, and he was convicted and sentenced and given the extreme penalty—the chair.

Q. And then the conviction was overturned and he was brought from Reidsville back to Ware County?

A. He was sent to Reidsville—that's correct. His case went to the City Court of Reidsville on a writ. They didn't grant the writ. It went to the Supreme Court, and Chief Duckworth said that the case should have been appealed, and that's about what he said. But that was the only error in the case—he said the case should have been appealed.

Q. And then after that he was brought back to Ware County? Right?

A. Then sometime after that—I don't know when—later on he did come back to Ware County.

Q. And he was held in Ware County until today? Is that right?

A. He stayed in Ware County jail until today. Now, I have discussed this with you. I've told you that if you wanted to see him you could see him any time you got ready, and if you had a minute's trouble, just to call me, and you have never told me that you couldn't see him and that everything wasn't all right.

Q. We agree to that. How far is Waycross from Folkston, Georgia?

A. Waycross is approximately thirty miles. It's in an adjoining county.

Q. Approximately how large is Ware County?

A. Waycross has approximately 26,000 people in it.

[fol. 88] Q. Do you know how large the jury venire is in that county?

A. I do not know.

Q. Do you have any idea?

A. The jury list?

Q. Yes.

A. I don't know. I know the law says you will take not more than two-fifths of the duly qualified citizens, and you will put that number sufficient in there to have a jury. That's all I know.

Q. It is substantially larger than it is in this county?

A. It would be.

Q. When is the next term of court in Ware County?

A. It will be the fourth Monday in October.

Q. This year?

A. This year. Of this month.

Q. And will that be the only term of court in Ware County?

A. Our next term will be in January.

Q. January, 1965?

A. That's right.

Q. In what other counties will this court meet during this year?

A. All right, we will have court here this week. We will go Monday morning—this coming Monday—to Coffee County for a week, and then we will be in Coffee County for another week, which will be two weeks straight in Coffee County. Then we go to Ware County for either one or two

weeks, and there's not a day in between. Court is continuous.

Q. And after Ware County?

A. And then after Ware I believe possibly we have a week between—in there.

Q. A week end—I didn't understand you.

A. I said I think possibly there might be a week between Ware County and Pierce County. Excuse me—we go to Bacon County the third week.

[fol. 89] Q. Bacon?

A. That's in Alma, Georgia, the third Monday—we go to Bacon County the third Monday in November, and then the first Monday in December, as I recall, we go to Pierce County. In other words, it's continuous court almost continuous from now 'til New Years.

Q. Except for the week the break in Ware County, is it Pierce or Bacon County?

A. There will be a few days between Bacon and Ware. There will be possibly one week where we will be getting ready for the other county.

Q. Are any cases scheduled for trial during that week?

A. Yes. Cases are scheduled for trial in all the courts I have named.

Q. Between Ware County and Bacon County a week, you said.

A. We will be preparing that week for Bacon County Court or the Pierce County Court.

Q. You won't actually be trying any cases during that week, will you?

A. We will not be trying cases during those days in between. No, we will be getting ready to go to court—be preparing. Since this is a matter of putting it on record, I might state that we don't have an Assistant Solicitor General, and we don't have any one to prepare these indictments and get them ready. When I come to court the entire Solicitor General's force is there, and I have to have time between courts to prepare indictments and get ready for court.

Q. How large is Bacon County?

A. Bacon County is a little bit larger than this county. I don't know the population. You have that census book there. I have no objection to you reading it out of there.

Q. Okay.

[fol. 90] A. But it is a little larger than Charlton County.

Q. We will stipulate for the record that Bacon County has 4,412 persons over the age of 21. The next County is Coffee County.

A. Coffee County has 21,560, I believe.

Q. The number of persons over 21 years of age in that county is 11,436 according to the 1960 census. And the next county you mentioned was Pierce County. Is that correct?

A. That's right.

Q. In Pierce County, according to the 1960 census there are 5,171 persons over the age of 21. I didn't get the names of the other two counties.

A. Let's see—I gave you Coffee, Ware, Bacon, Brantley, Pierce, and Charlton.

Q. Brantley?

A. Brantley, (spelling), B-r-a-n-t-l-e-y.

Q. And Brantley County, according to the 1960 census, has 3,107 persons over the age of 21. In Ware County, according to the 1960 census, there are approximately 19,221 persons over the age of 21.

The Defendant's Attorney: I wonder if we could shorten this by stipulating that the movant, Isaac Sims, Jr., was taken in custody over at Toledo on April 13th, 1963, by T. W. Walker and Arthur Walker.

The Solicitor General: That is substantially correct.

The Defendant's Attorney. Would you stipulate that?

The Solicitor General: I will stipulate that. That is, in essence, correct. I don't remember which one picked him up, but I remember that it was T. W. or the other boy, one. [fol. 91] The Defendant's Attorney: And we can stipulate that he was taken by police officers and the sheriff and Mr. Noah Stokes to Dr. Jackson's office?

The Solicitor General: I will stipulate that he went with the law enforcement officers, but I don't remember which ones.

The Defendant's Attorney: To Dr. Jackson's office? Right?

The Solicitor General: Yes.

The Defendant's Attorney: I suppose we could stipulate

that the movant, Isaac Sims, is the first person to be given the chair for rape in this county since 1913?

The Solicitor General: I wouldn't stipulate that, because I don't know one way or the other.

The Defendant's Attorney: Your Honor, we offer into evidence the verified motion for change of venue.

You can come down.

(Witness excused).

The Solicitor General: Your Honor, we ask the Court to dismiss the motion.

OVERRULING OF MOTION TO CHANGE VENUE

The Court: All right, I will overrule the motion to change the venue.

Now, what is next?

COLLOQUY BETWEEN COURT AND COUNSEL

The Defendant's Attorney: We would like to take up the plea in abatement going to the composition of the grand jury.

The Court: All right.

The Defendant's Attorney: Your Honor, on that we'd like to offer certified register of the grand jury list for the year 1954 to the present year.

[fol. 92] The Solicitor General: Now, your Honor, I want to object to any list of any grand jury except the grand jury in which this indictment is based. I have no objection to anything pertaining to the grand jury that has indicted this defendant in this case this time, because I think the Court will take judicial notice that, as a matter of fact, that the jury—grand jury and petit jury—is revised at certain times, and this summer was the time the jury had to be revised, and the grand jury, and that that was done. Therefore, anything pertaining to any grand jury or petit jury prior to the time of this indictment and prior to the time this jury was revised as a matter of law would be immaterial.

The Court: What would be the purpose of it?

The Defendant's Attorney: Your Honor, it brings in the fact of the historical pattern of exclusion of members of the negro race from the grand jury of this county, and we will be able to show that the pattern continued, and that

any representation on the grand jury that indicated this defendant as of yesterday was systematically and arbitrarily included the negroes, rather than a fair and impartial selection of negroes upon the grand jury.

The Solicitor General: If this is going to this jury and this grand jury, to this grand jury that indicted him, and if it is going to this petit jury that is going to sit on the case, then, of course, I have no objection. I think he is entitled to do that, but if he is going to other grand juries prior to the time that it was revised, I don't see how it could have any bearing on the case.

The Defendant's Attorney: Your Honor, we have some authorities relating to the question. Counsel is obligated to show the pattern—historical pattern—of this sort of [fol. 93] practice by putting in evidence relative to past grand juries, and then we have the privilege of showing where the exclusion may have appeared with respect to this particular grand jury.

The Court: Do you have any authority on that?

The Defendant's Attorney: Yes, sir.

The Court: I just don't see where it would have any bearing on it.

The Defendant's Attorney: The first authority that we'd like to cite is the case of Allen versus the State, which was decided by the Court of Appeals of Georgia this year (reading.)

The Solicitor General: (After argument of counsel.) The case he is referring to of Allen versus the State is found in the Georgia Law Reporter on page 56, and in that particular case it doesn't show that the jury panel had been revised. If the jury panel was in the same condition now that it was then I think the decision would be pertinent to it; but we have stated that we intend to show that this jury list has been revised as a matter of law, as the law requires; that it is now impaneled according to Code Section 59-106; that this defendant has been indicted under a proper grand jury that represents a cross section of this county, and that that grand jury presently has on it white people and colored people; that the jury that he is to be tried under are white and colored; I don't know the number of colored jurors we have, but there is a great number

here, and that this grand jury and petit jury are properly impaneled just as the law requires, and that to go any further than that would serve no purpose.

[fol. 94] The Defendant's Attorney: Your Honor, that would be a matter of evidence for the State to come forward and rebut and put on witnesses and other testimony to show that that has been the fact.

The Solicitor General: Since he has raised the issue I plan to call a witness and put him on the stand.

The Court: All right.

The Defendant's Attorney: Your Honor, it is my motion, and I think I have a right to go forward with the evidence that the Court can or cannot rule on.

The Court: I will reserve that ruling now.

The Defendant's Attorney: I'd like to have these identified, please.

(A document was thereupon marked for identification "Defendant's Exhibit 5.")

The Defendant's Attorney: I want to have these identified as "6", "7", "8", "9" and "10".

(The documents referred to were thereupon marked for identification, "Defendant's Exhibit 6", "Defendant's Exhibit 7", "Defendant's Exhibit 8", "Defendant's Exhibit 9", and "Defendant's Exhibit 10".)

The Solicitor General: "While you are searching the record cant we stipulate that this bill of indictment in question that is being considered now was indictment No. 1488, the State of Georgia versus Isaac Sims, Jr., charged with rape, that was returned by the October term, of Charlton County, grand jury, 1964?"

The Defendant's Attorney: Would you mark these, Mr. [fol. 95] Reporter?

(The documents referred to were thereupon marked for identification "Defendant's Exhibit 11", "Defendant's Exhibit 12", "Defendant's Exhibit 13", "Defendant's Exhibit 14", "Defendant's Exhibit 15", "Defendant's Exhibit 16", and "Defendant's Exhibit 17".)

The Defendants Attorney: The defendant tenders in evidence at this time Exhibit 5, the grand jury box for August

1, 1960; as Exhibit 6, grand jury box for January 24, 1960; as Exhibit 7, grand jury box of August 4, 1958; as Exhibit 8, the grand jury box of August 6, 1956; as Exhibit 9, grand jury box of August 9, 1954; as Exhibit 10, grand jury box of September 26, 1962; as Exhibit 17, the grand jury box of October 1, 1963.

We tender these into evidence, your Honor, on the plea in abatement concerning the grand jury.

The Solicitor General: That's what I objected to.

The Defendant's Attorney: I'd like to state that they're certified copies.

The Solicitor General: I object to anything that doesn't pertain to this present grand jury and petit jury, for the simple reason that it would serve no purpose.

The Court: When you are talking about "jury box", you mean the list of names in the jury box?

The Defendant's Attorney: The grand jury box of the years I've just called off. I tender these exhibits to show the names of the persons in those boxes.

[fol. 96] The Court: Well, isn't that the same thing I said a while ago I would reserve my ruling on?

The Defendant's Attorney: Yes, sir.

The Court: All right, I still will.

The Defendant's Attorney: Very well, we tender these at this time.

Your Honor, on the challenge to the array, movant tenders into evidence Exhibit 11, certified copy of traverse jury list for August 1, 1958; as Exhibit 12, the movant tenders into evidence the traverse jury box of August 6, 1965; as Exhibit 13, defendant tenders into evidence a traverse jury list for August 9, 1954—a certified copy of the same; as Exhibit 14, defendant tenders into evidence the traverse jury list of August 1, 1960—a certified copy of the same; as Exhibit 15, defendant tenders into evidence the jury list for January 24, 1961—a certified copy of the same; as Exhibit 16, the defendant tenders into evidence copy of jury list of October 1963—a certified copy of the same.

The Solicitor General: I have the same objection.

The Court: I will make the same ruling.

The Defendant's Attorney: Your Honor, we could certainly shorten the proceedings by stipulating—making cer-

tain other stipulations of matters of record that can easily be gotten. Do you have any objections to it?

The Solicitor General: I don't know what you have in mind.

Give me one minute.

The Court: All right.

The Defendant's Attorney: Your Honor, we stipulate that there have been no negroes who served as jury com-[fol. 97] missioners in Charlton County. Is that correct?

The Solicitor General: Within the last eight years.

The Defendant's Attorney: Within the last eight years.

The Court: All right.

The Defendant's Attorney: And that you have no other knowledge of it.

The Solicitor General: I have no other knowledge one way or the other. The only thing I know about is the last eight years.

The Defendant's Attorney: We further stipulate that the names of the jurors, grand and traverse jury, are taken from the Tax Digest of this county, and that for the three years beginning with 1961 there were a total of 1838 tax payers in Charlton County, and of this number 1471 were white, and 367 were negroes.

For 1962 the total number of tax payers in Charlton County were 1908. Of this number 1488 were white; 420 were negroes.

In the year 1963, according to the Tax Digest from the month of January to December, ending with the 4th of December of this year—January of 1963, rather—there were a total of 1959 tax payers in the county, 1548 were white and 411 were negroes.

The Court: Is that a stipulation between you and counsel?

The Solicitor General: Our records show 410, but we will agree that's right.

The Court: All right.

The Solicitor General: 410 is what our record shows instead of 411, but we will agree to 410.

The Court: All right.

The Defendant's Attorney: As to the population, your [fol. 98] Honor, we'd like to enter the following stipulation, which is based upon the census of 1960. Right?

The Solicitor General: Yes.

The Defendant's Attorney: The population of Charlton County, based upon the 1960 census, is as follows: In all classes the total is 5,313; male, 2,630; female, 2,683; white, 1,772 males; white females, 1,838; non-white males, 857; females 845; those over 21 in all classes, we have a total of 2,656; male, 1,318; female, 1,388; white male, 965, white female, 963; non-white males, 353; non-white females, 375. All those are over 21 years of age.

For Charlton County those over 65 years of age, the total of all classes is 327; male, 164; female, 163; white male, 131; white female, 119; non-white male, 83; non-white female, 44.

Is that right? That's the end of the stipulation.

The Solicitor General: Have you concluded now? Your Honor, we just agree to stipulate that is what the record shows—I mean what the census would show, without going into it.

The Court: All right.

The Solicitor General: As a matter of fact, I think the Court will take judicial notice of what the census would show, even without a stipulation.

The Defendant's Attorney: Your Honor, we would like to make the further stipulation that the Tax Digest provides one section for white tax payers and another section for negro tax payers, and that they are divided in that manner as of this current year.

Is that right?

The Solicitor General: Yes.

[fol. 99] **The Defendant's Attorney:** I don't know whether the Court will take judicial notice of this or not—that the defendant is a member of the negro race and is a citizen of the State of Georgia and of the United States.

Do you have any objection to that?

The Solicitor General: And the present indictment was returned October 6, 1964. Is that right?

The Solicitor General: Yes.

The Defendant's Attorney: We rest, your Honor.

Your Honor, we introduce the evidence both as to the plea in abatement and as to the challenge to the array.

The Court: All right.

THEO DINKINS was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Solicitor General.) Will you state your name?

A. Theo Dinkins.

Q. What position do you hold, if any, in the county? What is your business? What profession are you in? You are a banker, aren't you?

A. Banker.

Q. Mr. Dinkins, you are the owner and operator of one of the local banks here in Folkston, Georgia? Is that right?

A. Yes, sir.

Q. Mr. Dinkins, are you presently on the jury commission for selecting grand jurors and petit jurors for Charlton County, Georgia?

A. Yes, sir.

Q. How long have you served on that commission, Mr. Dinkins?

[fol. 100] A. Two years, I believe.

Q. You were on the jury revision commission here during this year, then? Is that correct?

A. Yes, sir.

Q. Now, how many people are on that commission to select the petit jurors and the grand jurors to serve for Charlton County, Georgia?

A. Five.

Q. There are five?

A. Yes, sir.

Q. Mr. Dinkins, has the jury commission revised the list and prepared a list of grand jurors and petit jurors to serve this year?

A. Yes, sir.

Q. When was that done, approximately, Mr. Dinkins?

A. About a month or six weeks ago.

Q. During the summer? Is that right?

A. Yes, sir.

Q. Now, why did you revise the grand jury list, or prepare one, and the petit jury list at that time, Mr. Dinkins?

A. The law requires the jury to be revised every two years. I believe August 1st or within 60 days thereafter.

Q. Did you revise the grand jury list and the petit jury list during the time as prescribed by law?

A. Yes, sir.

Q. And was the sole purpose of revising that list because the law requires you to revise it at that time?

A. Yes, sir.

Q. Now, Mr. Dinkins, where did you obtain the names of those persons that you selected for the petit jury and the grand jury list?

[fol. 101] A. The Tax Digest.

Q. Was that the Tax Digest here in Charlton County, Georgia?

A. Yes, sir.

Q. Mr. Dinkins, did you and the other commissioners go over the entire Tax Digest to obtain those names?

A. Yes, sir.

Q. Did you consider all the people that were duly qualified tax payers in Charlton County?

A. All the names on that Tax Digest, yes, sir.

Q. What basis did you pick them on—the petit jurors and the grand jurors that were selected to serve, Mr. Dinkins?

A. Well, we picked them on being upright, intelligent, law-abiding citizens.

Q. And is that the way you selected all the petit jurors and the grand jurors?

A. Well, we selected the petit jury first, and then from the petit jury list we selected the grand jurors as maybe having more experience—being better experienced, or something like that, from the petit jury list.

Q. Was all your selection based purely on the proposition of trying to obtain intelligent, upright citizens who would make competent jurors? Was that the basis of your selection?

A. Yes, sir.

Q. Was that the basis for the selection of the grand jurors—try to obtain people on the grand jury who were upright and intelligent and who would make competent and honorable grand jurymen?

A. Yes, sir.

Q. On your selection did you (and when I'm talking about you, I mean the commission that you were working with)—

was any consideration given whatsoever on the basis of race, [fol. 102] color, creed, or nationality, or anything else?

A. No. We took all the names from A to Z on the Tax Digest.

Q. And when a name came up on the Tax Digest how did you pick this man? On what basis did you determine that a man was upright and intelligent and would make a good petit juror or grand juror and competent to serve? What basis did you take it on? Did you know them or what?

A. Well, I didn't know all of them, but some member of the jury commission did know all of them—I mean, the ones that I didn't know they did know, and when a name came up if I knew him and considered him to be well and good, why, I said so. If I didn't, it was discussed, and somebody else who did know him would recommend him.

Q. Well, Mr. Dinkins, were all those jurors selected on the basis of being intelligent, upright, and good citizens—was that the basis you selected them on?

A. To the best of our knowledge.

Q. Now, on the tax books there is different colored paper in the tax books? Is that not correct?

A. That's right.

Q. Did you and the commission give any consideration whatsoever concerning the paper or whether they were in the front of the book or back of the book or how they were classified?

A. We went through the whole book.

Q. Did you treat everybody just alike?

A. Yes.

Q. Now, when you'd go back to your petit jury and your grand jury did you know of your own knowledge that you had white people?

A. Yes.

Q. Did you know of your own knowledge that you had colored people on it?

[fol. 103] A. Yes, sir.

Q. How did you know that?

A. Some of us knew the persons by their names.

Q. Because you knew them by their names?

A. Right.

Q. Now, Mr. Dinkins, in obtaining this petit jury and grand jury that is now serving for the October term, 1964,

of the grand jury and petit jury, was it for the purpose and business of making a selection of cross section of all the citizens of this county?

A. That's right.

Q. Now, you just testified that you selected the jurors' names from the Tax Digest?

A. Yes.

Q. And that you gave no consideration to race, creed or color, or what kind of paper it was on? That's correct, isn't it?

A. Right.

Q. Now (when you pulled a name—for example, we'll take the name of John Jones—what did you do when you wanted to select John Jones as a good, upright and intelligent citizen you thought would make a good jurymen? If you wanted to select Mr. John Jones how would you select him?

A. We'd call his name, John Jones.

Q. Then what would you do?

A. And some member of the board would say, "Okay, put him on," or somebody would say, "Leave him off".

Q. Would you base that on his intelligence and experience and on being a good citizen?

A. Correct.

Q. And if Mr. Jones was put on there what would you do? [fol. 104] What kind of paper would you put him on?

A. We'd put him on the list that our clerk was making up.

Q. And then would his name be put in the box?

A. When we got through, yes. We'd check them up and put them in the box.

Q. Mr. Dinkins, was there any designation on the list or on the jury box and the panel—any designation whatsoever as to white, colored, or other races?

A. None whatever.

Q. Could you look in the jury box in any manner when you pulled a name and tell from the ticket whether or not it was white, colored, or Spaniard, or anything else?

A. Not unless you knew the person the name belonged to.

Q. The only way you could tell, then, whether a person was colored or white when his name was drawn was that

you would have to personally know the person and know whether he was white or colored or not?

A. That's right.

Q. But the paper is the only thing you saw, with no designation?

A. No, sir.

Q. None whatsoever?

A. No, sir.

Q. From the jury box you couldn't possibly look at the jury list of the jury box and determine any race, creed, or color, or nationality, or anything else, could you?

A. No.

The Defendant's Attorney: I object to the way you put the question.

Q. (By The Solicitor General) Was all of it handled just alike?

A. Yes.

Q. Everybody was treated just alike?

A. Yes.

[fol. 105] Q. All the papers were designed just alike?

A. Yes.

Q. No marks, no distinction, no nothing?

A. Right.

Q. Now, do you know how many white citizens and colored citizens on the petit jury and grand jury?

A. No.

Q. Do you know there's a good number of white people in the jury box?

A. Yes.

Q. Do you know there's a good number of colored citizens in the box?

A. Yes.

Q. Now, how do you know that?

A. Because I remember the names that I went through.

Q. You know the people?

A. Yes, sir.

Q. And you didn't try to get any percentage any way of colored or white or any other nationality, did you?

A. I don't know how many of each are in there.

Q. And you based it solely on what you thought was up-

right, intelligent citizens who would make good, competent grand jurors or petit jurors? Is that correct?

A. Yes, sir.

Q. And no other way?

A. No, sir.

The Solicitor General: He's with you.

Cross examination.

Q. (By the Defendant's Attorney) Mr. Dinkins, just to make the record clear, you are a member of the white race, aren't you?

[fol. 106] A. Yes.

Q. And you are a banker? Is that correct?

A. Yes.

Q. What's the name of your bank?

A. Peoples Banking Company.

Q. What position do you hold?

A. President.

Q. How long have you been president?

A. Eight years.

Q. Did you have a position with this bank before that time?

A. No.

Q. Did you have a position with a bank in Charlton County?

A. No.

Q. What were you doing before you were made president?

A. In the timber business. I still am.

Q. What is the name of your timber business?

A. South Georgia Timber Company.

Q. Where was the office of that business located, or where is it located?

A. Here in town.

Q. In Folkston?

A. Yes.

Q. How long have you lived in Folkston, sir?

A. All my life.

Q. And how long is that.

A. Sixty-five years.

Q. And you know most of the people in the county?

A. I know most of them.

Q. Would that be true of the negro and white persons?

A. Yes.

Q. You know most of the persons who have bought property in this county, don't you?

A. I know lots of them.

[fol. 107] Q. Because they have dealings with your bank?

A. Yes.

Q. Would this be true of the negro and white persons of the county?

A. Yes.

Q. Is there any other bank in town besides your bank?

A. Yes.

Q. What's the name of that bank?

A. Citizens Bank.

Q. Is that the only other bank?

A. Yes.

Q. Which of the two banks is largest?

A. Citizens Bank.

Q. That's not your bank, is it?

A. No.

Q. Now, you testified that you selected the names from the Tax Digest and you didn't pay any attention to the color of the paper? Is that right?

A. Right.

Q. And the Tax Digest is kept one section for white and one section for colored? Is that right?

A. Right.

Q. And the section for the colored is divided from the section for white?

A. Yes.

Q. And it says on there "Negro tax payers," doesn't it?

A. I don't remember that. One is white paper and one is yellow paper. I remember that.

Q. And in the section for white tax payers the paper is white, isn't it?

A. Yes.

Q. And it says, "White tax payers"? Right?

[fol. 108] A. I don't remember that it does.

Q. But you do know that it's divided in that fashion?

A. Right.

Q. And the yellow and white paper separates the negro and white tax payers?

A. Right.

Q. Now, you testified that there are five members of the jury commission? Is that right?

A. Yes. Five and the clerk.

Q. Who is the clerk? The Clerk of the Superior Court?

A. Yes, he was our clerk.

Q. Could you identify for the record, sir, those five jury commissioners?

A. Mr. Herbert McDuffie, Mr. E. D. Stapleton, Mr. Richard Hodges, Mr. J. J. Conner, and myself.

Q. What is the occupation of the persons you have named?

A. Mr. Hodges has a chicken farm and farmer and timber grower. Mr. Stapleton is a druggist. Mr. McDuffie is a farmer, and Mr. Conner is a merchant. Is that all.

Q. That would make five including you.

A. Yes.

Q. And who is the clerk of the jury commission?

A. Clyde Woolard.

Q. He is also Clerk of the Superior Court?

A. Yes.

Q. Now, each of these persons you have named here as jury commissioners are members of the white race? Is that right?

A. That's right.

Q. You said "right"?

A. Yes.

[fol. 109] Q. Now, do you know how long Mr. Hodges has lived in this county?

A. All his life.

Q. Is that true of Mr. Stapleton and Mr. McDuffie and Mr. Conner?

A. Mr. Conner was raised in Callahan, Florida, I believe, but he's been here, I guess—oh, I don't know—I guess ten or fifteen years. Mr. Stapleton moved here in the teens, I believe.

Q. You mean in his teens?

A. No, in 1918, or somewhere along there.

Q. So he's been living in the county roughly about—

A. Forty some odd years.

Q. Now, Callahan, Florida, is about what—ten or twelve miles from here?

A. About twenty-two miles.

Q. It's right across the State line?

A. Yes.

Q. Do you have any knowledge whether or not Mr. Stapleton and Mr. McDuffie and Mr. Hodges and Mr. Conner are familiar with the people in this county?

A. Yes, they are.

Q. Would you say they are well acquainted with the people of this county?

A. I would think so. Mr. Stapleton and Mr. Conner would probably be more familiar with more people, probably, because of the nature of their business.

Q. Now, I want to take your attention back to the Tax Digest—the first thing that you do to select traverse and [fol. 110] grand jurors is to go to the Tax Digest? Is that correct?

A. Yes.

Q. And you go through the white section? Is that correct?

A. Yes.

Q. And you take names from the white section?

A. Yes.

Q. And then you go to the colored section?

A. Right.

Q. And you take names from the colored section?

A. Yes.

Q. Is that right?

A. Yes.

Q. And you put the names that were taken on a list? Is that right?

A. Yes.

Q. And one list is known as the grand jury list and the other list is known as the traverse jury list? Is that right?

A. Yes.

Q. Now, in selecting a person to serve on the grand jury what things do you consider when you make your determination that they are the most intelligent and upright citizens in the county?

A. You first select a petit jury list, and from the petit jury list you take the grand jury list, and you pick from the petit jury list the ones that you think have more experience and better qualified and put them in this other box as grand jurors.

Q. What are the things that you determine as making one

better qualified so that that person can serve as a grand juror?

A. Maybe a little higher intelligence or education or more business experience, or from having known them and know [fol. 111] that they are a higher type person than some of the others.

Q. Now, Mr. Dinkins, the first five years that you served as jury commissioner there were no negroes who were selected as grand jurors? Is that correct?

The Solicitor General: I believe he testified he served two years.

The Witness: I was appointed in '62, I believe.

The Defendant's Attorney: Strike that.

Q. Then, since 1962 there have been three revisions of the grand jury list? Is that correct?

A. There have been two—every two years.

Q. It was revised in 1963 by order of the Court? Is that correct?

A. I don't remember.

Q. That was a special revision for 1963, wasn't it?

A. You might be right. I just don't remember. I don't remember when it was revised. You have the record there.

Q. Well, how many times have you participated in revising the grand and petit box?

A. Twice.

Q. The first list that you assisted in revising there were no negroes on that list? Is that correct?

A. No, I think there were negroes on that.

Q. On the first list that you revised?

A. Yes, I think so.

Q. On the present list that you have revised there is only one negro on the grand jury list? Is that correct?

A. I don't know.

Q. If I told you that his name was Mr. Duncan, would that refresh your memory?

[fol. 112] A. I know that Ed Duncan is on there, but I couldn't tell you how many names are on there, because I don't remember, but there would be more than that in there, I'm sure.

Q. I'm talking about the grand jury list.

A. I am, too.

Q. I show you a copy—I show you the indictment—

The Solicitor General: (Interposing) I want to object to him doing this. I think the witness is confused. He has asked him about how many names are in the entire grand jury box, and he is fixing to show him the ones that are on the present grand jury. Now, we will stipulate that there is only one on the present grand jury.

The Witness: I do know that there is only one on the present grand jury, but I thought he was asking me how many were on the grand jury list that we prepared, and I don't know how many are on there.

Q. (By the Solicitor General) Your answer is referring to how many are in the box? Is that right?

A. Yes, There's only one on that list. No, in the box I don't know how many there are.

Q. (By the Defendant's Attorney) Do you know positively how many negroes are on the grand jury?

A. That's in session today?

Q. No, the grand jury list.

A. I do not.

Q. But you do know that there are some negroes on the grand jury?

A. Yes, I do.

Q. But you don't know how many?

A. I don't know how many.

[fol. 113] Q. Now, after you get the grand jury list you then make up the grand jury box? Is that correct?

A. Well, you have the box there with a lock on it, and you unlock the box and take all the names out of there and throw them in the waste basket and put the new names in.

Q. And these are the names that are taken from the Tax Digest? Is that right?

A. Yes.

Q. And then they're put in the box? Is that correct?

A. Yes.

Q. And then you draw from the box the names of grand jurors? Is that correct?

A. I don't see the box any more.

Q. Do you know who draws from the box?

A. I believe the judge.

Q. But when you take the names from the Tax Digest

and place them on the jury list this is when you make a determination as to the ones best qualified or most qualified? Is that correct?

A. Yes.

Q. Do you remember making any investigation of the persons you put on the grand jury list?

A. Not outside. We usually—someone on the jury commission—you see, the five that are on there are from different areas of the county, and they usually know—if I don't know, some of the other commissioners do know. Some one usually knows and they tell us what they know.

Q. How do you go about selecting a negro as the most intelligent or right person to serve?

A. The same way we do a white.

Q. What do you do?

[fol. 114] A. If I know him I know whether he's been a murderer or a thief, or whether he's considered in my opinion to be honest and upright.

Q. Do you ever go around and ask anybody about him?

A. No.

Q. It is based upon you—

A. Based upon my opinion and the opinion of the others.

Q. Do you have many contacts with the negro citizens of this county?

A. Yes.

Q. And so you know them quite well? Is that right?

A. Most of them I do.

The Defendant's Attorney: Mark this, please.

(The document referred to was thereupon marked for identification "Defendant's Exhibit 18".)

Q. Mr. Dinkins, I have in my hand Defendant's Exhibit D 18, which is the petit jury list revised by the jury commissioners on September 26, 1962—a certified copy of the same—and I will ask you do you know M. D. Thrift?

A. Yes.

Q. Do you know whether he is a negro or white person?

A. Yes.

Q. What is he?

A. White.

Q. Do you know Henry Lee Bailey?

A. Yes.

Q. Is that a white person or negro?

A. Negro.

Q. Do you know Edd Brunson?

A. Yes.

Q. Is he a negro person or white person?

A. Negro.

[fol. 115] Q. Do you know Peter J. Fulton?

A. Yes.

Q. Is he a negro person or white person?

A. Negro.

Q. Do you know Edd Brown?

A. Yes.

Q. Is he a negro or white person?

A. A negro.

Q. Do you know Ruby R. Raulerson?

A. No.

Q. You don't know that person?

A. No.

Q. I hand you Defendant's Exhibit D 18, and ask you to examine it and determine whether or not you find any persons who are named thereon of the negro race whom I have not already named, whose names appear at the end of the list.

A. How far from the end of the list?

Q. Pardon?

A. How far from the end of the list?

Q. Take the last four or five numbers, which is 356.

A. I've got 274.

Q. Start at 357.

A. 357 is a negro. Harry Everett is a negro. Peter Fulton is a negro. Edd Brown is a negro. Ruby R. Raulerson I do not know.

Q. But those last names of negro persons appear on the end of the list?

A. Yes.

Q. Do you find any other negro persons whom you know on that list?

[fol. 116] A. I haven't gone over it.

The Solicitor General: Your Honor, we will make our objection to that the same as the other as to going into a jury list that doesn't have anything to do with the present grand jury or petit jury, and wouldn't have anything to

do with this particular grand jury or petit jury. In other words, it has nothing to do with it—this defendant's right to be indicted by a grand jury and be tried by a petit jury that represents a cross section of this county. We say under the law he is entitled to a cross section of petit jurors and grand jurors, but that could only pertain to this petit jury and this grand jury—not some that used to be.

The Court: I am of the opinion that would be right.

The Defendant's Attorney: Your Honor, we tender that into evidence, and we tender it on the question of the existence of the pattern of discrimination.

The Court: Aren't you concerned with the manner in which the present jury is constituted?

The Defendant's Attorney: Yes, sir.

The Court: All right.

The Defendant's Attorney: Mark this, please.

(The document referred to was thereupon marked for identification "Defendant's Exhibit 19".)

Q. I show you Defendant's Exhibit D 19, which is a list of jurors for the week of October, 1964—October term, Superior Court of Charlton County—and ask you to examine this list.

A. What shall I be looking for?

Q. Do you see any persons on there known to you to be members of the negro race?

A. Yes.

[fol. 117] Q. Will you state their names and their numbers?

A. Troy Robinson.

Q. What number is that?

A. 20.

Q. 20.

A. 20.

Q. Do you see any others there?

A. Sol Houston.

Q. What number is he?

A. 12.

Q. Do you see any others?

A. There might be some here that I don't know. I probably didn't know all of them.

Q. Would you look through the list?

A. Norris Mitchell.

Q. What number is he?

A. 23. James Bolden—6.

Q. (By the Solicitor General) What number was that?

A. 6. Robert Everett—14. That's the ones that I recognize as being negroes.

Q. (By the Defendant's Attorney) Those are the only ones that you recognize on the list?

A. Yes.

The Defendant's Attorney: We offer into evidence as Defendant's Exhibit 19 the jury list of October, 1964.

[fol. 118] The Solicitor General: We have no object to the present jury list.

The Court: All right, it is admitted without objection.

(The document referred to was thereupon received in evidence.)

The Solicitor General: Have you finished with the witness?

The Defendant's Attorney: That's all.

Redirect examination.

Q. (By the Solicitor General) Now, Mr. Dinkins, you have gone through this list and you have picked out various names at random that included numbers all the way through this jury list, did you not, of colored and white people?

A. Yes.

Q. There is no way that you can look at this list and tell whether a person is colored or white, is there, except the fact that you know the person?

A. Right.

Q. And the only way you can tell they are colored is you just have to know that name—know that person?

A. Yes.

Q. And they are not in the front part or in the back part or any special place in the list, are they?

A. They are scattered through the list.

Q. They are scattered all the way through the list?

A. Yes.

Q. And with no designation whatsoever?

A. None that I can see.

Q. Now, Mr. Dinkins, you have named off a number of people that you said were colored—isn't it very possible and [fol. 119] probable that there are other colored people throughout this list that you just don't recognize the names?

A. Yes. I don't know all the colored people in the county. I know a good many of them, but I don't know all of them.

Q. So, it's not your testimony that that's all there are, but that's just some of the people on there who are colored?

A. Yes.

The Solicitor General: That's all.

Recross examination.

Q. (By the Defendant's Attorney) Now, Mr. Dinkins, you were able to identify the ones who are on there by their names as negroes? Is that correct?

A. I didn't say that. I said that was the ones that I recognized as being negroes.

Q. You recognized five persons whose names appear here?

A. I didn't count them.

Q. Who are on the jury list? Is that correct?

A. I suppose there were five, but I didn't count them.

Q. And you were able to recognize them by name? Is that right?

A. Yes, the ones I did recognize.

Q. Now, you participated as a jury commissioner in compiling this jury list, didn't you?

A. Yes.

Q. And you went through the Tax Digest and selected these names? Is that right?

A. Yes. I helped select them.

Q. You knew at the time you selected the names from the Tax Digest which persons were negro and which persons were white, didn't you?

A. Yes.

Q. Because the names were separate?

[fol. 120] A. Because they were separate.

The Defendant's Attorney: That's all.

Redirect examination.

Q. (By the Solicitor General) I believe you've already testified, Mr. Dinkins, that you didn't give that any consideration whatsoever?

A. We did not.

Recross examination.

Q. (By the Defendant's Attorney) You said you gave that no consideration—you mean none other than the fact that you went through from the white section into the colored section?

A. We started at the A's in the first of the book and went through Z's in the white, and then went from A to Z in the colored.

The Defendant's Attorney: That's all.

The Solicitor General: Come down.

(Witness excused)

COLLOQUY BETWEEN COURT AND COUNSEL

The Solicitor General: Your Honor, at this time we will renew the motion that all motions be dismissed.

The Defendant's Attorney: Your Honor, I want to put on some rebuttal testimony. I would like to call some witnesses.

The Court: All right, call them.

The Defendant's Attorney: I don't believe they are here. I would like to call Troy Robinson, Norris Mitchell, Sol Houston.

The Court: Are they a member of this jury at this particular term? Is Sol Houston a member of this jury?

The Defendant's Attorney: Yes, sir.

The Court: Well, you came up here and agreed—you said you thought you wouldn't be through until 2 o'clock and I've dismissed all those jurors until 2 o'clock.

The Defendant's Attorney: I wonder if we could put them on at 2.

[fol. 121] The Court: I reckon so. I had no idea that you were going to call them as witnesses. But that's all right. Call them.

(The defendant's attorney thereupon called some names and received no replies.)

The Solicitor General: At this time we urge the Court to dismiss all the motions that pertain to venue, and all the motions he has made.

The Court: You have asked that all the motions be sustained—here is a motion to suppress illegal evidence. Are you talking about that, too?

The Defendant's Attorney: I haven't submitted any evidence on that.

The Court: That's what I thought. You said all of them, but you mean just the motion to change the venue, the plea in abatement, and a second plea in abatement, and the challenge to the array? Is that what you meant?

The Defendant's Attorney: Yes, sir.

The Court: All right.

The Solicitor General: What is the other one?

The Court: Here is a motion to suppress illegally obtained evidence.

The Solicitor General: I don't know anything about any illegally obtained evidence.

The Court: Now, that motion we haven't gone into, so we are not considering that motion yet. Is that right?

The Defendant's Attorney: To suppress illegal evidence?

The Court: Yes.

The Defendant's Attorney: No, sir; we haven't considered that yet.

OVERRULING OF CHALLENGE TO ARRAY AND PLEAS IN ABATEMENT

The Court: All right, I will overrule the challenge to [fol. 122] the array, the plea in abatement—two pleas in abatement.

The Defendant's Attorney: Your Honor, I want to offer some evidence on that—I have a certified copy of the record which shows the record of the execution of negro and white persons in the State of Georgia from 1930 to 1960 for the offense of rape, and I'd like to introduce it at this time. It's under the seal of the Justice Department, and it is certified.

The Court: All right, show it to the Solicitor.

The Solicitor General: Your Honor, I don't see what materiality it would have to show how many people have been electrocuted. That's all this purports to show, isn't it?

The Defendant's Attorney: Could we stipulate that since 1930 58 negroes have been electrocuted for the offense of rape in the State of Georgia and 3 white persons?

The Solicitor General: No, I wouldn't stipulate that. I don't know whether it's true or not, and I object to it because it has no bearing on this case.

The Defendant's Attorney: We'd like to introduce it.

The Court: For what purpose?

The Defendant's Attorney: For the purpose of showing the number of negroes who have been electrocuted for the offense of rape in this State since 1930.

The Court: Well, what is the purpose of it?

The Defendant's Attorney: We say that capital punishment has been discriminatorily applied, and that it is shown by the statistics of the number of persons who have been electrocuted.

The Solicitor General: Your Honor, before that would be admissible they would have to show that there are other similar rape cases and what their punishment was, and so on and so forth. All this record goes to show is that these [fol. 123] people he's been talking about have been electrocuted, these people are the only ones who committed rape cases in this State. White people might not have committed any rape in this county.

The Defendant's Attorney: That was in the State.

The Solicitor General: Well, according to the record, no other white people might have committed rape in this State.

The Defendant's Attorney: We have the record here.

The Court: Well, I don't see what bearing it would have.

The Defendant's Attorney: Your Honor, there is an allegation in our plea in abatement that Statute 1302, Title 26, has been discriminatorily applied, and we allege specifically that since 1930 58 negroes and 3 white persons have been executed for the crime of rape, and we'd like to put this in to prove that allegation.

The Solicitor General: Your Honor, I don't understand how he knows that he's going to get the chair this time. Unless he gets the chair this time then it couldn't be relevant.

The Court: I just don't see where it would be material on a motion of this nature.

The Defendant's Attorney: Your Honor, it's one of the allegations of the pleadings.

The Court: Well, I'm going to rule it out, anyway.

The Defendant's Attorney: Your Honor, we offer into evidence a certified copy of the Justice Department report showing—known as "Executions 1962", published in April, 1963. We offer it for the purpose of showing the number of negroes executed in Georgia since 1930 and the number of white persons who have been executed, and I'd like to have it marked as part of the record in the case.

[fol. 124] The Solicitor General: I object to it on the ground that it is irrelevant and immaterial. It has no bearing on this case one way or the other.

The Court: All right.

(The document referred to was thereupon marked for identification "Defendant's Exhibit 20".)

The Defendant's Attorney: We have a motion to suppress illegal evidence.

The Court: You have made a challenge to the array, plea in abatement, and a second plea in abatement, and a motion for change of venue. Now, we have disposed of those four, now?

The Defendant's Attorney: Yes, sir.

The Court: I will overrule the motions. All right, what is next?

The Defendant's Attorney: A motion to suppress illegally obtained evidence. Movant, Isaac Sims, Jr., claims in his motion that a confession gotten from him on April 13, 1963, violates his rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article 1, Paragraphs 3 and 5 of the Constitution of the State of Georgia of 1945, and the facts are specifically set out in the motion itself.

Shall we proceed, your Honor?

The Court: Yes, go ahead.

ROBERT E. LEE was thereupon called as a witness in behalf of the defendant, and, having been duly sworn, testified as follows:

Direct examination.

Q. (P-7 the Defendant's Attorney) Will you state your [fol. 125] name for the record.

A. Robert Lee.

Q. Mr. Lee, what's your occupation?

A. Sheriff of Ware County, Georgia.

Q. How long have you been Sheriff of Ware County, Georgia?

A. Eight years.

Q. What are your duties as sheriff of the county?

A. Well, I'm chief law enforcement officer of Ware County.

Q. How long have you lived in Ware County?

A. All of my life.

Q. Approximately how many persons do you have employed by you as deputy sheriffs?

A. Four.

Q. Will you state their names, please?

A. Dudley Jones, Tommy Rouse, George Roberts, and Edgar Hersey.

Q. I direct your attention to April 13, 1963—do you recall the defendant Isaac Sims being brought to the Ware County jail?

A. Yes.

Q. Do you know under what circumstances he was brought there?

A. I wasn't present when he was brought in.

Q. When is the first occasion that you saw him after he was brought to your jail?

A. The early part of the night on the 13th.

Q. You say early part of the night—approximately what time of night would that be?

A. In the neighborhood of 10:30, P. M.

Q. About 10:30, P. M.?

A. Yes.

Q. Where was he at the time that you saw him?

[fol. 126] A. In the interview room downstairs in the Ware County jail.

Q. When you say downstairs in the jail, will you describe the number of floors you have in the jail?

A. Three floors.

Q. Are the prisoners kept upstairs?

A. Yes.

Q. And you have one section for keeping colored prisoners and another section for keeping white prisoners?

A. Right.

Q. And negro males are kept on the third floor? Is that right?

A. Yes.

Q. And white females are kept on the second floor, I believe? Is that right?

A. How is that, now?

Q. White females are kept on the second floor?

A. First floor.

Q. First floor?

A. Yes.

Q. Now, who is kept on the second floor?

A. White males.

Q. And the defendant, being a negro, was on the third floor?

A. Right.

Q. And when you arrived was he in the sheriff's office?

A. He was in the jail.

Q. In your office?

A. Upstairs. He was on the third floor.

Q. He was upstairs on the third floor? Is that right?

A. Yes.

Q. Did you ask that he be brought downstairs?

A. One of the deputies told me that he wanted to talk to me.

Q. And what happened then?

[fol. 127] A. I called Sheriff Sikes. Sheriff Sikes was the sheriff of this county—Charlton County—at that time. I talked with him, and after talking with Sheriff Sikes Isaac was brought downstairs in the interview room. I identified myself to him, told him I was sheriff of Ware County, and I identified the three other officers who were present, told him their names and their positions, and I advised him of his rights—that any statement he made could be used against him in court; that he was entitled to an attorney.

Q. Let me ask you this question: Will you describe the sheriff's office?

A. Have you been to the jail of Ware County?

Q. Yes, sir; but I'd like to ask you.

A. As you enter the jail there's a big room to the left where the jailer's office is in a big room to the left. There's where I talked with him.

Q. Is that to the east or west end of the jail?

A. How is that?

Q. Is that to the east or west end of the jail?

A. Well, that would be as you enter from the north. There's not but one entrance to the jail.

Q. A north entrance?

A. Right. As you enter the jail there are two small rooms and a large room to the left.

Q. And the interview room is the large room?

A. That's right.

Q. Will you describe that room?

A. The size or what was in the room?

Q. Yes, sir; the size and what was in the room.

A. I'd say the room was approximately 14 by 16. Something like that.

Q. And what was in the room?

[fol. 128] A. Well, the jailer has got a three-quarter bed in there and desk and chairs and bath room.

Q. Lights?

A. Of course there were lights in there.

Q. And you say that there was at least three other persons there other than yourself? Is that correct?

A. That's right.

Q. Did any of them have on uniforms?

A. Yes, they did.

Q. Were they wearing weapons?

A. I couldn't recall whether they did have them on or not.

Q. Did you have any weapon? Did you have any on?

A. No.

Q. And all the persons who were in the room were members of the white race except the defendant? Is that right?

A. Yes.

Q. Would you describe his condition at that time?

A. Well, he was normal.

- Q. When you say he was normal what do you mean?
- A. Well, I mean—re-ask me that question.
- Q. I say when you say he was normal what do you mean?
- A. Well, I couldn't tell whether anything was wrong with him or not. When I say normal, he was a normal man.
- Q. Let me ask you this question; How was he dressed?
- A. I don't recall what kind of clothes he had on.
- Q. Do you recall as to his face?
- A. Yes.
- Q. Did he have any scars or bruises on his face?
- A. No, he didn't.
- Q. Did he have any stitches over his eye?
- A. How is that?
- [fol. 129] Q. Did he have any stitches over his eye?
- A. If he did I didn't see them.
- Q. Did he have on white pants?
- A. I don't recall.
- Q. Did he have any blood on his shirt?
- A. Not as I could tell.
- Q. But you don't deny that he could have had?
- A. Well, I think that if he was wearing white pants and got blood on there or a white shirt I would recall it.
- Q. Now, at the time you brought Isaac downstairs to the interview room you weren't looking for anyone else for this offense, were you?
- A. No.
- Q. And you had talked to the sheriff of Charlton County, Mr. Sikes, and you knew he wasn't looking for anyone else, didn't you?
- A. Right?
- Q. Now, you say that you advised the defendant of his rights—exactly what did you say to him?
- A. Well, I identified myself to him and told him I was the sheriff of Ware County. I didn't know. I didn't know whether he was from Charlton County or Ware County or where he was from until he told me Charlton County was his home; and I told him he was entitled to an attorney.
- Q. Let me ask you a question there: Did you ask him if he had any money or anything to call an attorney?
- A. Well, let me put it in these words: I advised him that any statement that he made could be used against him in court; that before he made a statement he was entitled

to an attorney if he wanted one; and he made the statement that he didn't want an attorney; that he wanted to tell what happened.

[fol. 130] Q. Did you tell him what it meant to have an attorney?

A. Well, I think after I advised him, he being a normal man, after he had advice from me that any statement he made could be used against him in court, and that he was entitled to an attorney, and if he told me that he wanted one, well, I would have seen that he got one.

Q. You assumed that if he were a normal man he would have understood what you said? Is that correct?

A. Yes, and in talking to him he was a normal man.

Q. That's your opinion?

A. Well, from my talking with him that's what I would say.

Q. But you didn't make any effort to get him an attorney, did you?

A. He didn't ask me for one.

Q. And you didn't make any effort to get him an attorney?

A. No.

Q. Did you offer him the use of a telephone?

A. It's not my place to run out and get attorneys for nobody, white or colored. I feel like when I advise a man of his rights, being sheriff of the county, well, then, that's all I can do.

Q. And you just generally advise people of their rights?

A. In a case like a man is placed in jail I do. If he wants to give a statement to me of a crime that he has committed I advise him of his rights.

Q. At this time you didn't have a warrant for him, did you?

A. How is that?

Q. At the time the statement was made you didn't have a warrant for the arrest of Isaac Sims, did you?

A. I really don't know whether there was a warrant on file or not. I couldn't say.

Q. You hadn't seen a warrant?

[fol. 131] A. I hadn't see one. There could have been one.

Q. But you hadn't seen it?

A. No.

Q. Would it have been filed in your office?

A. It could have been in the office.

Q. Now, how was the statement taken down? Who wrote it down?

A. One of the deputies.

Q. Do you know his name?

A. Yes. Dudley Jones.

Q. Did he write it in long hand or did he type it?

A. Long hand.

Q. Will you illustrate to the Court the manner in which it was taken down? Did he write it down as the defendant was talking?

A. That's right.

Q. Now, the defendant, Isaac Sims, didn't say that "4-13-1963", did he?

A. He didn't say that.

Q. He didn't say "10:30, P. M.," did he?

A. He didn't say that.

Q. Mr. Jones wrote that down?

A. Right.

Q. Did he say that "I, Isaac Sims, Jr., age 27 years, resident of Folkston, Georgia"? Did he say that?

A. Go ahead and read on down, I can tell you when he started talking.

Q. All right. He didn't say "make the following statement, freely and voluntarily. I have not been threatened or promised anything. I know that this statement can be used against me in court."

He didn't say that, did he?

A. He told me that.

[fol. 132] Q. He was told that?

A. Right. That is not the statement.

Q. "I, Isaac Sims, Jr." Strike that, please. What I asked you was that on the page before Mr. Jones started writing, or did Mr. Jones write it?

A. It was all written down in long hand.

Q. All that was written down before the gentlemen started writing?

A. All the statement—that was written down to start with, all at the same time. All that is in long hand. All the statement is in long hand. It is not any prepared form.

Q. "I, Isaac Sims, Jr., on April 13, 1963, was driving

Cleo Jackson's 1953 or '54 Bel Air Chevrolet, color brown and white."

Did defendant say that?

A. Right.

Q. "About 10 o'clock, A. M., I was driving down the St. George highway. I drove up behind a white woman driving a new looking car, color white. I was drinking whiskey at the time."

Did defendant say that?

A. Yes.

Q. The closer I got to the car I had a feeling I have dealings with this white woman. I took the car I was driving and bumped this lady's car several times."

Did defendant say that?

A. Yes.

Q. "Finally I knocked her car in the ditch. I got out of my car and as she got out of her car I grabbed her."

Did the defendant say that?

A. Yes.

Q. "I pulled her across the road into some bushes. She was wearing pedal pushers, grey looking. She kept fighting me, and I hit her in the face, knocked her down. She [fol. 133] kept hollering for help."

Did the defendant say that?

A. Yes.

Q. Now, where was the defendant at the time he was making the statement?

A. He was sitting in the chair in the interview room.

Q. And where were you sitting in respect to the defendant?

A. Well, we were sitting in the room there around the table.

Q. Where was Mr. Jones sitting?

A. I don't recall just the exact spot.

Q. Was Mr. Jones sitting in front of him or behind him or what?

A. I couldn't say.

Q. All right. Were some of you behind him and some in front of him?

A. I don't know exactly where they were sitting. We were all around the table that was in the interview room.

Q. You were around the table?

A. Right.

Q. "She kept hollering for help. Then I was afraid someone would hear her, so I choked her. Then I tore her pedal pushers off. She was in her monthly period. She had kotex on. I pulled that off of her and forced her to have intercourse with me. When I finished I walked back to where the car I was driving was parked. I could not get my car to start. It would not crank. So then I realized that I was in trouble and I ran through the woods to Mr. Walter Hopkins' place at Toledo, a distance of about ten miles. Some colored boys told me there was a lot of people and dogs hunting someone. These colored boys went to 'Mr. Hopkins' and told him where I was, at the home of a girl named Marguerite. Mr. Stokes and another white man [fol. 134] came and picked me up and carried me to the sheriff."

Did the defendant say that?

A. Yes.

Q. "The pants and shorts I was wearing had blood on them."

Did the defendant say that?

A. Yes.

Q. "This statement is made freely and voluntarily in the presence of Sheriff Lee, Ware County, Georgia, Chief Johnson, Chief of the Ware County Police Department, Dudley Jones, Deputy Sheriff, Ware County, Georgia, and B. C. Worley, constable of the 1231st District of Ware County, Georgia."

Did the defendant say that?

A. Did he say what, now?

Q. "This statement is made freely and voluntarily in the presence of Sheriff Lee, Ware County, Chief Johnson, Chief of Ware County Police".

A. He didn't say that.

Q. He didn't say that?

A. No.

Q. "I have been informed of my legal rights by Sheriff Robert E. Lee that I do not have to make any statement whatever, knowing that this statement can be used against me in a court of law, I have had the statement read to me, which consists of four pages, which is a true and correct statement made by me."

Did he say that—the defendant?

A. Let me see the statement.

(Counsel hands paper to the witness)

Q. You don't have any independent recollection of whether he said it or not?

A. Now, this part where it says, "I do not have to make any statement whatsoever"—he didn't say that. He was advised that he didn't have to.

[fol. 135] Q. Mr. Jones wrote that in?

A. Right. He was advised that he didn't have to. He didn't make that statement.

Q. So, some of the things contained in the statement were written in by Mr. Jones?

A. That's right.

Q. That the defendant didn't say?

A. That's right.

Q. Now, was this statement signed at 10:30 or did you start taking it at 10:30?

A. Well, it was somewhere approximately 10:30.

Q. Do you know what time on the evening of April 13, 1963, that you started taking this statement?

A. Well, the statement was short. It wouldn't have taken but just a few minutes.

Q. How many minutes?

A. Oh, ten or fifteen minutes.

Q. Did you start taking the statement at 10:30, or did you conclude it at 10:30?

A. Well, I wouldn't say we finished at 10:30 or started at 10:30. It was approximately 10.

Q. So you questioned him from 10 to 10:30?

A. How is that?

Q. You questioned him from 10 to 10:30?

A. I didn't say that.

Q. You started at 10?

A. I didn't say that.

Q. You started at 10:30, then?

A. I said that we could have finished at 10:30 or started at 10:30, I don't recall.

Q. Now, you know that the defendant has been talked with frequently, hasn't he?

[fol. 136] A. Well, that's the only time I've ever talked with him.

Q. That's the only experience you had with him?

A. Maybe go up in jail and ask him how he was getting along, or things like that.

Q. It would take him a long time to say how he was getting along didn't it?

A. I wouldn't say that.

Q. He didn't talk very much, did he?

A. Well, let me put it this way: I don't imagine I would do much talking if I was in the same shoes.

Q. I asked you whether the defendant talked very much?

A. On the 13th that's the most I've ever talked with him.

Q. Was the defendant asked any questions while he was making the statement?

A. I don't think so. As I stated, to begin with I identified myself and my position, the office I hold, and the other three men in there told him who they were—he was introduced to them, and then he was informed of his rights, and he wanted to make a statement—he wanted to clear up what had happened.

Q. You didn't ask the defendant any questions at all?

A. I could have. I could have.

Q. Did you?

A. Well, I wouldn't say whether I did or not. I just don't recall right now.

Q. But you don't deny that you could have asked the defendant some questions? Is that right?

A. Well, I wouldn't say that I did or I didn't.

Q. But I say that you don't deny that you could have asked him some questions?

A. I'm not going to say now, because I don't recall [fol. 137] whether I asked him any or I didn't.

Q. The question is you don't deny that you could have asked him some questions?

The Solicitor General: Your Honor, he has already answered him and said he didn't remember. If he doesn't remember he doesn't remember.

The Court: I think so.

Q. (By the Defendant's Attorney) Did Mr. Jones ask him any questions?

A. I couldn't say that.

Q. But you don't deny that he could have?

A. He could have.

Q. Did Mr. Johnson ask him any questions?

A. I don't think so.

Q. What about Mr. Worley—did he ask him any?

A. I don't think so.

Q. How far is Ware County from Folkston County?

A. Thirty some odd miles.

Q. How frequently do you keep prisoners who have committed offenses in Charlton County in Ware County?

A. How is that?

Q. How frequently do you keep Carlton County prisoners over in Ware County?

A. Carlton County?

Q. Yes, this county here?

A. Well, over a number of years we've kept several for them, I couldn't say how many.

Q. When you say over a number of years, could you give us approximately how many years?

A. I couldn't say.

[fol. 138] Q. You say you kept several? Is that right?

A. That's right. Not only from this county, but other counties.

Q. But it's infrequent that you keep Carlton County prisoners in your county jail? Is that right?

A. It depends on the crime that they are charged with.

Q. Do you have any other prisoners over there from Carlton County now?

A. I couldn't say. I'd have to check the jail records to see.

Q. Did you have any other Carlton County prisoners there on April 13, 1963?

A. I just don't know.

Q. Did you have any prisoners from Carlton County in your jail between November, 1963—

A. (Interposing) Let me state this: I keep prisoners in the Ware County jail, Federal and State, and I don't keep a record of how many are coming and going—I do keep a record, but I don't have that record with me, and I can't tell you for the last two years how many from Charlton

County have been up there. It could have been one or two or a half a dozen. I don't know.

Q. Now, Mr. Lee, who pays you to keep the Carlton County prisoners in your jail?

A. Charlton County pays me.

Q. You have to keep records of the prisoners?

A. Right.

Q. So you have some records there of prisoners you've kept?

A. Right.

Q. But you're not able to recall the number you've kept?

A. No.

Q. But you say they've been kept for several years?

A. Several.

[fol. 139] Q. Do you know whether or not Isaac Sims can read or write?

A. He can't read.

Q. Do you know whether he can write?

A. I don't.

Q. The only thing you know is that he signs his name? Is that right?

A. When the statement was read back to him he made the statement that he couldn't read, and the statement was read back to him.

Q. You didn't inquire as to whether he understood the paper or not, did you?

A. Yes, I asked him if he understood it—if that was correct.

Q. What did he say?

A. He said it was.

Q. How long did it take you to read it back to him?

A. Well, it's a short statement. Dudley is the one read it back to him—Dudley Jones.

Q. About how long did it take?

A. I don't know. Maybe a minute or so.

The Defendant's Attorney: You can come down.

Cross examination.

Q. (By the Solicitor General) Sheriff, just as a matter of information about keeping prisoners, I believe you've already testified that you keep State prisoners and Federal

prisoners—that's because you have a new, modern jail, isn't it?

A. Right.

Q. And you also keep a good number of prisoners from time to time from over in Bacon County? Is that right?

A. From all adjoining counties.

Q. From all adjoining counties?

A. Right.

[fol. 140] The Solicitor General: You can come down.

The Defendant's Attorney: Let me ask you one question.

Q. (By the Defendant's Attorney) You don't keep prisoners from Carlton County unless they're involved in some type of serious offense? Is that correct?

A. Well, I wouldn't say that. Probably I might keep one charged with a misdemeanor.

Q. Do you know under what circumstances you would keep a misdemeanor?

A. Well, I'll say I don't know. I might keep one. I wouldn't know unless I went back and checked the records to see what he was being charged with. I couldn't say. I wouldn't be able to say unless I looked at the record.

Q. But your testimony is that during the last several years you've only kept a few prisoners from Carlton County? Is that correct?

A. Several. I didn't say how many. Several.

Q. Earlier you testified that whether or not you would keep prisoners from this county in jail would depend on the offense? Is that right?

A. That's right, and the circumstances.

Q. What do you mean, sir, by "the offense"?

A. Well, it depends on the crime that was committed.

Q. Could you give an example?

A. Well, it wouldn't be for me to decide, now. If Charlton County wanted to send one up to me it would be left entirely up to the sheriff of this county.

Q. But you know the kind that you receive in the jail?

A. Well, it depends on the circumstances of the case whether the sheriff would want to send him up or not.

Q. And what would be the circumstances?

[fol. 141] A. I couldn't tell you because I don't know.

Q. And you've never made an investigation?

A. It's not my duty to come down here and investigate the other sheriff's business.

Q. You talked with Sheriff Sikes about the case, didn't you?

A. Right.

Q. And he told you about the circumstances, didn't he?

A. Right.

Q. So you knew why you were keeping the prisoner up here?

A. I knew.

The Defendant's Attorney: Come down.

The Solicitor General: Just one other question.

Recross examination.

Q. (By the Solicitor General) Now, I believe you already stated that he said he wanted to come down and make a statement to you and you took it for that reason?

A. That's right.

Q. You were the chief presiding officer at that time, weren't you?

A. Right.

Q. You were in charge of it?

A. Yes, sir.

Q. And, being sheriff and in charge of it, all the statement was made in your presence, wasn't it?

A. Right.

Q. And did you or anyone else in your presence offer him anything to make the statement?

A. No.

Q. Was he threatened any way?

A. No, sir.

[fol. 142] Q. Did anybody offer him anything or threaten him in any way?

A. No, sir.

Q. Was the slightest fear of injury produced to him by words or acts?

The Defendant's Attorney: I object to that.

The Court: On what ground?

The Defendant's Attorney: I object on the ground that one is not capable of saying whether or not there was the slightest fear.

Q. (By the Solicitor General) All right, I will ask him did anybody there beat him or anything in the sheriff's office?

A. No, sir.

Q. Was he threatened in any way?

A. No, sir.

Q. Did anybody talk harshly to him?

A. No, sir.

Q. Did anybody raise their voice and talk loud?

A. Just a normal tone of voice.

Q. Was there anything said or done that would give any reasonable man any reason to think that some harm or fear might come to him?

The Defendant's Attorney: I object to that.

Q. (By the Solicitor General) Well, was anything said or done to this man that might give him any ground for any reason to think some harm might come to him?

A. No, sir.

The Solicitor General: That's all.

Redirect examination.

Q. (By the Defendant's Attorney) When you say he wasn't beaten you mean he wasn't beaten in the jail? Is that right?

A. Well, if he was beaten I would see some signs on him. [fol. 143] Q. Well, actually, when you say he wasn't beaten you have reference to what happened in your jail? Is that right?

A. I'm talking about while he was in my custody. He hadn't been mistreated.

Q. And he was in the custody of other police officers before he was brought to your jail? Is that right?

A. Right.

Q. And you don't know what happened to him at that time, do you?

A. I do not.

Q. Did you talk kindly to him, Sheriff?

A. I didn't mistreat him any way, or curse him out any way, or anything like that.

Q. I asked you did you talk kindly to him?

A. I talked to him in a normal voice.

Q. Was that kindly?

A. Well, you can form an opinion from the way I'm talking now.

Q. Then, would you say you were talking kindly to him?

A. I say I talked in my normal voice.

Q. I'm asking you did you talk kindly to him?

A. He wasn't mistreated any way.

Q. I'm asking you, sir, if you talked kindly to him?

A. He wasn't abused and he wasn't cursed. He was talked to in a normal manner.

Q. Did you talk kindly?

The Solicitor General: I object to him continuing to ask the question time and time again. It is a matter of opinion. He can state how he did talk to him.

The Court: Let him say how he did talk.

The Defendant's Attorney: That's what I asked him, [fol. 144] your Honor.

The Court: No, you asked him did he talk kindly.

Q. (By the Defendant's Attorney) Would you answer the question?

A. I talked to him in a normal way like I would to anyone else.

Q. Did you ask him if he wanted any water or any food or anything like that?

A. I don't recall whether I did or not.

Q. Do you know whether he had had anything to eat?

A. He hadn't been in long enough.

Q. Do you know what time he came in?

A. Not exactly. Sometime in the afternoon.

(Witness excused)

DUDLEY JONES was thereupon called as a witness in behalf of the defendant, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Defendant's Attorney) Will you state your name, please?

A. Dudley Jones.

Q. What do you do?

A. I'm deputy sheriff of Ware County, Georgia.

Q. How long have you been deputy sheriff?

A. Approximately three and a half years in Ware County.

Q. What did you do before then?

A. Deputy sheriff of Charlton County.

Q. Of this county?

A. Yes.

Q. How long were you deputy sheriff here?

A. Six and a half years.

Q. What did you do before that?

[fol. 145] A. I was on the police force in Fernandina Beach, Florida, approximately ten years.

Q. Do you know the defendant, Isaac Sims, Jr.?

A. Yes.

Q. Do you know what time he was taken to the Ware County jail on April 13, 1963?

A. I did not receive him.

Q. Did you see him in the jail?

A. I did. I had carried another prisoner up in the jail and that's when I saw him.

Q. What time of day did you first see him?

A. Approximately 6:30 in the afternoon.

Q. Where was he at the time you first saw him?

A. He was in a cell on the third floor.

Q. Was anyone else in the cell with him?

A. No, there was not.

Q. Will you describe the cell?

A. Well, it was just a regular cell with two bunks in it and a commode.

Q. And no one else was in the cell with him?

A. There was not.

Q. What was his condition when you first saw him?

A. I just saw him through the little door there, and he just spoke to me and I didn't pay too much attention to him.

Q. When you say cell with a little door, did it have bars?

A. About three or four little bars where we feed through.

Q. When did you next see him?

A. About 10:30 that night.

Q. And what caused you to see him at that time?

A. Well, he said he wanted to talk to the sheriff.

[fol. 146] Q. How did you learn of that request?

A. Well, he told me at 6:30 through the bars.

Q. What did he tell you at 6:30?

A. When I walked up he spoke to me. He said, "Mr. Dudley, are you working here?" I said, "Yes." And I says, "What are you doing here," and he proceeded to tell me, and I said, "You want to talk to the sheriff about it?" He said, "Yes", so I made arrangements to see that he did talk to the sheriff.

Q. And what did you do when you made arrangements to see that he talked to the sheriff?

A. Well, we took him down to what we call the interview room and the sheriff was there.

Q. Was this at 10:30?

A. Approximately 10:30 that night.

Q. Had you attempted to get the sheriff before 10:30?

A. Yes, I had notified him slightly after I left upstairs.

Q. And you told the sheriff about 6 o'clock about it?

A. About 6:30 when I talked to him, and then time I finished putting the prisoner in and got back around and contacted the sheriff it was probably about that late, yes.

Q. How long did it take you to put the prisoners in?

A. Oh, maybe five minutes.

Q. About five minutes.

A. Approximately, yes.

Q. And after you put the prisoners in you—

A. (Interposing) One prisoner. Not prisoners.

Q. One prisoner?

A. Yes.

Q. Was that the only prisoner you put in?

A. At that time, yes.

Q. After you put that prisoner in did you then contact the sheriff?

[fol. 147] A. I did.

Q. Where was the sheriff at this time?

A. He wasn't in the office at that time. It was late in the evening, and he came by the jail a little later on and I contacted him.

Q. What time did he come by the jail?

A. I don't remember exactly what time it was.

Q. Was it before 10:30?

A. Yes, it was.

Q. About what time before 10:30 was it?

A. That I don't know.

Q. What's your best recollection?

A. I don't.

Q. You have no recollection?

A. I don't remember exactly—I don't know what time it was, but it was before 10:30. It was between 6:30 and 10:30.

Q. Was it closer to 10:30 or closer to 6:30?

A. I don't know.

Q. You have no recollection?

A. No, I don't know exactly what time it was.

Q. How long did the sheriff stay at the jail when he first came?

A. Oh, he was probably there two or three hours then. He came in and I talked to him.

Q. And where did you talk to him?

A. In the office.

Q. In which office?

A. In the main office, where the radio and all is in the main office.

Q. And how long did the sheriff stay there?

A. I imagine he stayed there two or three hours.

Q. And the sheriff was there for two or three hours before 10:30?

[fol. 148] A. No, no. From the time that I contacted him until after we had taken this statement and he left. After we got through the statement somebody else came in and wanted to talk to him. It was probably two hours or two and a half or three from the time I told him and he got ready to leave and had completed everything, not only his case, but others, too.

Q. Let's see, now: You say the sheriff came in sometime between 6:30 and 10:30?

A. Right.

Q. Is that right?

A. Yes.

Q. And the sheriff stayed there for about three hours?

A. Well, I'd say two or three. Somewhere in that neighborhood. I don't know exactly how long.

Q. About what time did the sheriff leave?

A. That I don't know.

Q. What's your best memory?

A. I can't say.

Q. Did the sheriff leave before you left or did you leave before the sheriff left?

A. He left before I did—no, wait a minute. No, he left before I did.

Q. And what time did you leave?

A. Oh, I went back and forth, and I don't remember what time I did actually leave the jail and check out.

Q. Well, approximately what time did you usually check out?

A. Oh, probably 11:30 or 12 o'clock, or somewhere along there.

Q. What time did you check out on April 13, 1963?

A. I don't remember.

Q. What are your usual working hours?

[fol. 149] A. There's not any. As long as something is there to do. Just four men in that large county we work a lot overtime.

Q. What time do you usually come on?

A. If I'm on day shift I'm on at 6 o'clock in the morning.

Q. Now, on April 13, '63, were you on day shift?

A. I don't remember.

Q. You don't know whether you were on the day shift or not?

A. I do not.

Q. Do you know, actually, whether you had been working from 6 o'clock, A.M., on the 13th of April, 1963, and 6 o'clock, P.M.?

A. I don't.

Q. But you do know that you worked after 6 o'clock on April 13th?

A. Yes, I was working after 6 o'clock.

Q. What are the hours of the respective shifts?

A. There's not any special hours.

Q. But you do have shifts of how many hours?

A. Twelve hours.

Q. Twelve hours a shift?

A. Yes, as long as there's something to do.

Q. And when does the shift start?

A. What shift?

Q. Any shift?

A. Starts off at 6 o'clock in the morning. I come out at 6 in the morning now.

Q. And how long do you work.

A. I work until 6 except on Wednesdays, Fridays and Saturdays.

Q. Now, you work from 6 to 6 in the day shift and 6 to 6 in the night shift?

A. No, work sometimes a split shift. Sometimes come on at 6 o'clock.

Q. But you were off Wednesdays, Fridays and Saturdays?

[fol. 150] A. No, I worked late Wednesdays, Fridays and Saturdays. The other two deputies have Wednesday off and we have to work our shift and double over for them on theirs. And on Fridays and Saturdays we all do car work, two men to the car.

Q. You don't have any time off on Saturday?

A. No.

Q. Work all day on Saturday?

A. That's right.

Q. What time did you start on Saturday?

A. Right at the present I'll start Saturday morning at 6 o'clock.

Q. Now on April 13th, '63, what time did you start?

A. I don't know. I don't know what shift I was on then.

Q. Now, you say you quit about 11:30 on the 13th? Is that right?

A. Or 12, or somewhere along there. I don't know exactly what time it was.

Q. Now, about how many hours had you been working when you quit?

A. I don't know because I don't remember the time I started.

Q. Are you on a salary?

A. I work on a salary.

Q. Is that a weekly salary?

A. By the month.

Q. And I believe you testified that you first saw the defendant about 6:30? Is that right?

A. Yes, that's right.

Q. And you talked with him through some bars of the jail? Is that correct?

A. Yes.

Q. And you say you did not have an opportunity to see the defendant at that time? Is that correct?

A. I did not see him at that time, except what little I [fol. 151] could see him through the bars.

Q. What part of him could you see through the bars?

A. When he spoke to me he was standing back a little bit—has face.

Q. Did you recognize him?

A. After he spoke to me and said, "Mr. Dudley", I did.

Q. You recognized his voice?

A. Yes.

Q. How long had you been knowing the defendant, Isaac Sims, on April 13, 1963?

A. I don't know. Quite a few years. I was born and raised in this county.

Q. You say quite a few years—how many?

A. Oh, ten or twelve.

Q. So you knew Isaac pretty well, didn't you?

A. Yes.

Q. Did you ever have Isaac work for you?

A. No.

Q. And you say you didn't see him again until about 10:30? Is that right?

A. That's correct.

Q. Did you take him down to the sheriff?

A. No, the jailer brought him down.

Q. What's the name of the jailer?

A. I don't remember who was on at that time. Whoever the jailer was on duty at that time.

Q. And when he was brought downstairs was he handcuffed?

A. When he was brought down he was not in handcuffs.

Q. Was the jailer armed?

A. No, he was not.

Q. He wasn't armed. Were you armed?

[fol. 152] A. I had my gun on. I was on duty.

Q. When Isaac was brought to the interview room who was in the room?

A. Sheriff Lee was in there, B. C. Worley, constable of the 1231st District then. He is now county policeman. And Estes Johnson, Chief of County Police.

Q. And you got a chance to see the defendant at that time, didn't you.

A. I did.

Q. What was his appearance at that time?

A. Well, just normal. About like he is now.

Q. What did he have on?

A. I don't remember what he had on.

Q. But you are sure that he was normal?

A. Do what?

Q. But you're sure that he was normal?

A. He looked to me like he was.

Q. You got a good look at him?

A. Yes, I did.

Q. Did you get a chance to see his face?

A. Yes.

Q. Did you see any injuries about his face?

A. I did not.

Q. Did you look to see if there were any injuries?

A. Well, I was looking right at him when he was talking.

Q. Did you think he was scared?

A. No.

Q. Were you friendly with him?

A. Well, just like I always talked to him.

Q. How did you always talk to him?

[fol. 153] A. Well, just a normal tone of voice.

Q. Isaac knew you? Is that right?

A. Yes.

Q. Now, you took a statement from Isaac? Is that right?

A. I did.

Q. You wrote it out in longhand?

A. I did.

Q. What time did you start writing the statement down?

A. At 10:30.

Q. At 10:30?

A. Right.

Q. How long did it take you to write it down?

A. Approximately twenty or thirty minutes, or somewhere along there.

Q. I didn't quite understand you.

A. About twenty minutes.

Q. About twenty minutes?

A. Yes.

Q. Where was Isaac at the time you were writing it down?

A. We were sitting at a table, similar to this table right here. It was up against the wall, and Isaac was sitting on this side, the sheriff was sitting here (indicating), and I was sitting on the other side.

Q. The sheriff was sitting next to Isaac? Is that right?

A. He was sitting at the end of the table and I was sitting facing him.

Q. All right. You say Isaac was sitting on one side the table and you were sitting on the other side of the table? Is that right?

A. Yes.

Q. You were sitting on the opposite side?

A. The table was up against the wall and I was sitting [fol. 154] over on that side.

Q. And Isaac was sitting next to the wall? Is that right?

A. Well, as you come in the door—you walk in the door this way, and it's between the door back that way probably about eight feet, and it's a table similar to that (indicating). He was sitting right there. He was actually sitting at the door—the door was closed, but he was sitting with his back to the door.

Q. When you refer to a table similar to that, you have reference to a wooden table that appears in the court room that's about six feet in length and about four feet in width, and about, I'd say, four feet high? Is that about right?

A. I guess so.

Q. That is the type of table to which you have reference?

A. It was a wood table similar to this right here.

Q. And you were sitting opposite Isaac?

A. Right. Facing him.

Q. And Isaac was next to the wall? Is that right?

A. Actually, he was next to the door.

Q. Was the door closed?

A. Yes.

Q. Was it locked?

A. No.

Q. And where was the sheriff sitting, Mr. Lee?

A. He was sitting at the head of the table.

Q. He was sitting at the head of the table?

A. Yes.

Q. Was that, actually, near the door?

A. Well, you'd have to go around Isaac to get to the door.

Q. Now, where was Mr. Johnson?

A. Well, he was sitting back away from us over there [fol. 155] next to the entrance to the back door, about ten feet back over there.

Q. Was he sitting behind Isaac or behind you?

A. No, Isaac was sitting like that (indicating) and he was sitting at an angle from him.

Q. And he was sitting side of him?

A. No, he was sitting ten or twelve feet away from him.

Q. At right angle?

A. Yes.

Q. Now, where was Mr. Worley?

A. Well, he was sitting side of him in another chair.

Q. Sitting side of Mr. Johnson?

A. Right.

Q. All right. And you sat at the table? Is that right?

A. Yes.

Q. Did you ask Isaac any questions?

A. No.

Q. You didn't ask him any questions at all?

A. I did not.

Q. Did Mr. Lee ask him any questions?

A. Not that I heard, he didn't.

Q. Isaac just started talking?

A. Well, we informed him of his rights, and nobody was going to bother him, asked him did he want to give a statement, and told him his right to have a lawyer, and he said he didn't need one—he'd go ahead and tell it; and so he proceeded to tell it, and I wrote it as near as I could what he said.

Q. Now, you had been knowing Isaac about twelve or thirteen years, hadn't you?

A. Yes.

Q. And you knew Isaac had never gone to school, didn't you?

A. Well, I didn't check on him that close to see whether [fol. 156] he ever went to school or not.

Q. You knew Isaac hadn't had too much education, didn't you?

A. I couldn't tell you.

Q. You knew Isaac had had some mental trouble, didn't you?

A. What?

Q. Had some mental trouble?

A. I didn't know about that.

Q. You didn't know about that?

A. No.

Q. You knew that Isaac did work as a laborer, didn't you?

A. Yes. He worked as a laborer. I didn't know what all he was doing. I didn't keep that close tab on him. I just knew him, but I didn't keep close tab on him.

Q. And you didn't ask Isaac any questions at all?

A. I did not.

Q. You wrote down that he had been informed of his rights, didn't you?

A. I did.

Q. Isaac didn't say that, did he?

A. It was read to him.

Q. You mean it was read to him?

A. Yes. And he was told what his rights were before it was ever written down.

Q. And it was read to him after?

A. That's right.

Q. Did you read the statement to him?

A. I did. I asked him did he want to read it and he told me to read it to him. He said he couldn't read, so I read it to him, and asked him if he understood it, and he said, "Yes".

Q. How long did it take you to read it?
[fol. 157] A. Oh, maybe five or six minutes. I just took my time and read it to him so he could thoroughly understand it.

Q. And it took Isaac about twenty or thirty minutes to make the statement to you, and it took you only five minutes to read it to him?

A. Well, there is a difference in writing it down. I don't write too fast.

Q. Now, Isaac doesn't talk too fast, either, does he?

A. Just a normal tone.

Q. Isaac sort of mumbles?

A. He stutters. He took time between times to tell what happened.

Q. Mr. Jones, I'd like for you to help me on this if you can: When the sheriff came to the jail, and you say the sheriff came between 6:30 and 10:30, a space of two to three hours? Is that right?

A. Yes, approximately.

Q. Now, what was the sheriff doing during that period of time?

A. He was talking to other people who came in wanted to see him.

Q. To see whom? The sheriff?

A. Yes.

Q. But not to see Isaac?

A. No.

Q. Now, did anybody come to see Isaac while he was in jail there?

A. Not that I know of. Do you mean prior to the trial or after?

Q. Just a minute. Do you know whether anybody came to see Isaac prior to the time that he made the statement?

A. Not as I know of. During the day I couldn't tell who went up to see him.

Q. If somebody had come there to see him you would have known it, would you not?

A. No, I would not.

[fol. 158] Q. Well, I came to see him yesterday, didn't I?

A. Well, I just happened to be around at that time. I work out on the road.

Q. Now, was the jailer? Is the jailer a negro fellow or white fellow?

A. White.

Q. Do you know his name?

A. Mr. Pete Barns is on now. I don't know whether he was on at that time or not.

Q. Do you know anybody else who might have been on at that time?

A. No, I don't know.

Q. Do you usually keep prisoners from this county in the Ware County jail?

A. We keep them on several occasions, yes. When the sheriff of this county wants one kept we take him up there and keep him, like we do for other counties.

Q. You've been a deputy in this county and you're presently deputy in Ware County? Right?

A. Yes.

Q. Under what circumstances are prisoners from this county transferred to Ware County?

A. It's just according to whether the sheriff of this county wants them carried up there or not.

Q. And you are familiar with the facts and circumstances when the sheriff of this county sends prisoners up there, aren't you?

A. Well, it's just according to what the sheriff wants to do. He can send them up there on any occasion if he wants to.

Q. Now, from your experience what kind of cases does he carry prisoners up there on?

The Solicitor General: I want to object to that. It has [fol. 159] no bearing on it, and dinner time is running out here. It's just taking up time here with question after question that have no bearing on the case. I want to object to it because it's immaterial and irrelevant.

The Court: Ask pertinent questions and go into it as far as necessary, and, in the interest of time—well, proceed.

The Defendant's Attorney: Do I understand the Court is limiting my examination?

The Court: No, but I agree with the Solicitor that I see no purpose in a lot of questions, but go ahead.

Q. (By the Defendant's Attorney) Do you remember testifying in this case in October, 1963?

A. Yes.

Q. Do you remember being examined by Mr. Hayes?

A. Yes, I do.

Q. And do you remember testifying as follows: "Question (By Mr. Hayes): Now, what did he tell you up there?" "Answer: Well, getting back to the time when he asked me was I working up there, and I told him yes—I asked him what he was doing in there, and he said he had been put in there for molesting a white woman. I said, 'In Folkston?' He said, 'Yes.'" And I asked him what happened, and he started to tell me, and I said, 'Have you talked to anybody about this?' He says, 'No.'" I said, 'Would you be willing to make a statement to that effect?' He said, 'I will.' And, in turn, I went down to Sheriff Lee and told him what was said. Sheriff Lee, in turn, contacted Sheriff Sikes, and he told him to go ahead and get a statement, and the sheriff sent me upstairs and I brought the subject down and we obtained a statement from him."

Now, is it your testimony now that you didn't bring [fol. 160] Isaac Sims downstairs?

A. The jailer was the one that brought him down from the cell to the room as far as I remember.

Q. You don't remember testifying over here in October, 1963?

A. That I brought him down?

Q. Yes, sir.

A. The jailer brought him down.

Q. So your testimony at that time is incorrect? Is that right?

The Solicitor General: Now, your Honor, we object to that statement. When he said "We brought him down" it could certainly mean that one member of the force brought him down. He's trying to insinuate that he told something that wasn't right, when he's just inferring that.

The Court: All right.

Q. (By the Defendant's Attorney) In October, 1963, you testified, "and the sheriff sent me upstairs and I brought the subject down and we obtained a statement from him."

Now, was your testimony incorrect at that time?

A. I don't remember whether it was or not, but I do not remember going up and getting him and bringing him down.

Q. So you've changed your testimony?

A. I haven't changed it, but I don't remember whether I said that or not.

Q. Do you remember whether or not you went up and got him?

A. I don't believe I went up and got him.

Q. So your testimony at that time is incorrect?

A. If that's what it says down there, but I still didn't go up and get him.

Q. You testified here that Sheriff Lee was downstairs the first time you talked with him about it? Is that right?
[fol. 161] A. He was not.

Q. Well, you testified in October, 1963, "I went down to Sheriff Lee and told him what was said."

A. But it didn't say what time I went down there. I went down to him, but I didn't say what time.

Q. All right. I thought you called Sheriff Lee.

A. Well, I did. He came to the jail and I talked to him and told him about it—he wanted to make a statement, but he wasn't there when I went back down. I contacted him and he came down and I told him.

Q. You remember testifying in the former case as follows: "Question (By Mr. Hayes): Now, about what time of the day or night did you see him?" You answered: "Well it must have been around 6:30." "What were you doing at the time? Were you on duty?" And you answered: "Yes, sir." and then goes on in the sheriff's office, and then you went on in response to Mr. Hayes' question, and you said in answer to the question: "And you were on the outside of the cell?" And you said, "Right." "Question: You had no direct contact with him? In other words, the bars were between you? Is that right?" "Yes, sir." That was your answer. "And was any other officer present?" "Answer: No, sir." "And at that time did you threaten him in any way?" Your answer: "No, sir. I did not." "Question: Did you promise him anything?" "Answer: No, sir." "Was there any hope of reward offered him?" "Answer: No, sir." "Was he in position to be in the slightest fear of injury any way?" "Answer: No, sir." "Was he offered the slightest hope of reward or benefit?" "Answer: No, sir." "Was he induced by another in any manner to make a statement?" "Answer: No, sir." "Now (he said), what did he tell you up there?" And you testified that he said he wanted to make a statement, and you went downstairs and contacted the sheriff. Now, which is correct, the statement you made in October,

[fol. 162] 1963, or the statement you are making on the stand now?

A. I contacted him and he came down and I talked to him about it. When you contact a man personally by 'phone it's still contact.

Q. Let me ask you this question: You said, "I went down to Sheriff Lee." Now, what did you mean by "I went down to Sheriff Lee?"

A. I couldn't contact him upstairs. There's not a 'phone, and I went downstairs and contacted him.

Q. Did you go downstairs where Sheriff Lee was?

A. No, I went down there where I could contact him. His office is downstairs and we call it "down there" when we're upstairs.

Q. Well, you did go downstairs and see him?

A. Not directly to him, no.

Q. Well, that's your statement in the record? Is that right?

A. Well, I contacted him just like it says there, but it didn't say what time I contacted him, and I didn't say there what time I contacted him.

Q. You said, "I went down to Sheriff Lee."

The Solicitor General: Your Honor, he has already asked him that question several times and he explained it.

The Court: I think he has.

Q. (By the Defendant's Attorney) And you stated at the time the statement was made he had no attorney? Is that correct?

A. He did not. He was advised he could get one.

Q. Did you offer to permit him to call?

A. He didn't ask to.

Q. And you didn't ask him if he wanted to call?

A. No. He just said he didn't want an attorney.

Q. Did you ask him if he wanted to talk to an attorney or his sister or anybody?

A. No, he didn't ask to.

[fol. 163] Q. And you didn't tell him that he could, did you?

A. No. He didn't ask me.

Q. As a matter of fact, you've never told him he could make a telephone call, did you?

A. No, he didn't ask me to.

The Defendant's Attorney: That's all.

The Solicitor General: You can come down.

(Witness excused.)

(Whereupon, at 1:30, P.M., a recess was taken.)

After Recess

2:30 P.M.

The Court: You may proceed.

The Solicitor General: It is stipulated between counsel for the State and the accused that when Mr. Theo Dinkins testified in relation to the members of the Jury Commission who were present and selected the traverse jury and the grand jury, that he stated that five members were present, which was correct, but there was also another member of the Jury Commission who was sick and could not be there, whom he did not name, and his name was Harold Crawford.

The Court: All right, the jurors that were here this morning, it is going to be necessary again that the jurors leave the court room. You may do that now.

(People leave the court room.)

The Court: All right, call your next witness.

The Defendant Attorney: I'll call the defendant, Isaac Sims, Jr., to take the stand, please.

ISAAC SIMS, Jr., defendant herein, was thereupon called as a witness in his own behalf, and, having been duly sworn, testified as follows:

[fol. 164] Direct examination.

Q. (By the Defendant's Attorney) Will you speak up where the Court can hear you?

A. Yes, sir.

Q. State your name, please.

A. Isaac Sims, Jr.

Q. I'm going to ask you some questions, Mr. Sims, and try to answer to the best of your knowledge.

A. Yes, sir.

Q. Do you know the date of your birth?

A. Yes, sir.

Q. What is it?

A. In February.

- Q. February when?
A. February the 5th.
Q. When?
A. The 5th.
Q. What year?
A. Well, I couldn't exactly tell you that.
Q. You say you couldn't exactly tell that?
A. I couldn't exactly tell you that.
Q. Do you mind if I call you "Isaac"?
A. No, sir.
Q. Isaac, do you know how old you are?
A. Yes, sir.
Q. Do you remember your parents?
A. Yes, sir.
Q. What's your father's name?
A. Isaac Sims.
Q. Is he living or dead?
[fol. 165] A. He's dead.
Q. And your mother?
A. Yes, sir.
Q. She's dead, too?
A. Yes, sir.
Q. When did your father die?
A. Well, I couldn't exactly remember.
Q. When did your mother die?
A. She been dead about twelve years now. I don't remember what date it was.
Q. Isaac, do you have any sisters and brothers?
A. Yes, sir.
Q. How many sisters do you have?
A. Three.
Q. Three?
A. Yes, sir.
Q. Where do they live?
A. Well, two of them live here and I've got one living in Atlanta.
Q. What are their names?
A. One named Hilda and another one named Lula Mae and Inez Sims.
Q. Do you have any brothers?
A. Yes, sir; one.
Q. Where does he live?

A. New York.

Q. Isaac, how long have you lived in Carlton County?

A. All my life.

Q. Have you ever been away from the county for a long period of time?

A. No sir.

Q. Have you been out of the county at all?

[fol. 166] A. Yes, sir.

Q. Where did you go?

A. Well—you mean off doing time or anything?

Q. For anything?

A. Well, I went to Lake City and stayed a while.

Q. How long did you stay?

A. About a year and six months.

Q. Is that Lake City, Florida?

A. Yes, sir.

Q. You were in service for a while, too, weren't you?

A. Yes, sir.

Q. What did you do for a living, Isaac?

A. Well, I pulpwood.

Q. What is that?

A. I beg your pardon?

Q. What is that?

A. Well, stuff you make paper out of.

Q. Did you say that you did laboring work?

A. Yes, sir.

Q. Do you know what that means?

A. Well, labor, I imagine.

Q. What does that mean to you?

A. I'm not able to tell you what it means. All I know is labor.

Q. How much did you make when you worked, Isaac?

A. Well, I made from sometimes \$60 a week, and sometimes 40.

Q. You were paid so much a load, weren't you?

A. Yes, sir.

Q. Isaac, have you ever gone to school for a little while?

A. Yes, sir; a while.

Q. How long did you go to school, Isaac?

A. Well, I didn't go too much on account of I had to help [fol. 167] my father work, and he taken me out of school.

Q. How far did you go in school, Isaac?

A. I went to the third grade.

Q. And how old were you when you quit the third grade?

A. Well, I was about seventeen or eighteen.

Q. About seventeen or eighteen when you quit the third grade?

A. Yes, sir.

Q. Isaac, can you read and write?

A. No, sir.

Q. Isaac, I show you a copy of the indictment returned against you, No. 1488, and I ask you to read it aloud if you can.

A. Well, I couldn't read it.

Q. You say you can't read and write?

A. No, sir.

Q. But you can write your name, can't you?

A. Yes, sir; I can print it pretty good.

Q. Isaac, do you remember an incident that happened back in April, on April 13th, 1963? Do you remember being over at Toledo and being taken into custody by Arthur Walker?

A. Yes, sir.

Q. After you were taken into custody over in Toledo what happened to you?

A. Well, I got in the car with Mr. Noah Stokes—I mean in a pickup, with another white fellow. I don't know his name. And I went out to the highway and got in the car with the State Patrol.

Q. When you got to the highway did you see anything at the highway unusual?

A. Yes, sir.

Q. What did you see, Isaac?

A. Well, I seen a heap of cars and a right smart of white folks.

[fol. 168] Q. Did you see a car there burning?

A. No, sir.

Q. All right. After you were taken out on the highway do you know where you were then taken?

A. When I got in the car with the State Patrol?

Q. Yes.

A. They brought me to Dr. Jackson's office.

Q. And where is Dr. Jackson's office located?

A. Sir?

Q. Where is Dr. Jackson's office located?

A. Right up the street there.

Q. Is it in Folkston, Georgia?

A. Yes, sir.

Q. Who was in Dr. Jackson's office when you got there?

A. Well, there wasn't nobody in there. After I got in there there was a right smart in there then.

Q. And when you say "a right smart", about how many do you mean, Isaac?

A. I couldn't tell you how many, but there was about seven or eight of them in there, I imagine.

Q. Were they all white people?

A. Yes, sir.

Q. Were some of them peace officers?

A. Yes, sir. State Patrol.

Q. Did they have on uniforms?

A. Yes, sir.

Q. Did they have on pistols?

A. Yes, sir.

Q. And did anything happen to you after you got in Dr. Jackson's office?

[fol. 169] A. Yes, sir.

Q. What happened to you, Isaac?

A. Well, Dr. Jackson, he knocked me down and kicked me over my eye lid and busted my eye on the right side.

Q. Did anything else happen to you?

A. And he grabbed me by my private and drug me on the floor.

Q. Did he drag you by your private on the floor?

A. Yes sir.

Q. Did that hurt you, Isaac?

A. Yes, sir.

Q. Did it hurt you a lot?

A. Yes, sir; pretty bad.

Q. Did Dr. Jackson take off your clothes?

The Solicitor General: Now, we object to all these leading questions.

The Defendant's Attorney: Your Honor, I can save time and expedite it. It's obvious that the witness has extremely limited ability.

The Solicitor General: He doesn't show any lack of ability to be able to comprehend what's going on.

The Court: Well, ask him the questions and let him answer them.

Q. (By the Defendant's Attorney) What, if anything, happened to your clothes, Isaac?

A. What happened to my clothes?

Q. Yes. When you were in Dr. Jackson's office.

A. They taken them off.

Q. Do you know who took your clothes off?

A. Yes, sir; he taken them off.

Q. Do you remember what, if anything, happened to your [fol. 170] clothes after they were taken off?

A. No, sir; I didn't see them no more.

Q. Were you given any other clothing to wear?

A. Yes, sir; a pair of white pants.

Q. Were you later on taken from Dr. Jackson's office to another place?

A. Yes, sir.

Q. Where were you taken?

A. Ware County jail.

Q. Do you know who took you over to the Ware County jail?

A. Well, yes, but I don't know his name.

Q. Were they white men or negro men?

A. They was white men.

Q. Were they police officers?

A. State Patrol.

Q. Did they have on uniforms?

A. Yes, sir.

Q. Did they have on pistols—guns?

A. Yes, sir.

Q. What were you wearing, if anything, other than white pants when you were taken to the Ware County jail?

A. I had on my top shirt.

Q. Pardon?

A. I had on a top shirt.

Q. When you were taken to the Ware County jail where in the jail were you taken?

A. Well, on the fifth floor—on the third floor.

Q. Were you put in some type of cell?

A. Yes, sir.

Q. Can you tell what the cell looked like?

A. Yes, sir.

[fol. 171] Q. What did it look like, Isaac?

A. Well, it's a little small cell with one door to it, and it's got a little hole they feed me through,

Q. Do you know about what time of evening or night it was when you got over to the Ware County jail?

A. Well, it was around about—I'd say between 5 or 6 o'clock, I believe it was. It might not have been that late.

Q. Do you remember seeing Mr. Jones over at the jail?

A. Yes, sir; I seen him.

Q. Do you know about what time you saw him?

A. Well, I seen him when I went down to the office.

Q. What time did you go down to the office, Isaac?

A. Right after Mr. Sheriff Lee came up.

Q. How long had you been in the jail before Sheriff Lee came up?

A. Well, I was up there about—about two hours, I imagine.

Q. Did Sheriff Lee come upstairs where you were?

A. Yes, sir.

Q. Did he say anything to you?

A. Yes, sir; he asked me—he said did I say I wanted to talk with him, but I didn't say that.

Q. He said what, now?

A. He asked me did I say I wanted to talk with him, but I didn't said I wanted to talk with him, but I went downstairs and talked with him.

Q. Was this Sheriff Lee?

A. Yes, sir.

Q. Do you see him in the court room?

A. Yes, sir; that's him (indicating).

The Defendant's Attorney: Let the record indicate that the witness identified Sheriff Lee.

[fol. 172] Q. Now, are you acquainted with Mr. Jones—Mr. Dudley Jones?

A. Yes, sir.

Q. Do you see him in the court room?

A. Yes, sir.

Q. Will you point him out?

(The witness points)

The Defendant's Attorney: Let the record show that the witness points to Deputy Sheriff Dudley Jones.

Q. Do you remember talking with him?

A. When I went downstairs.

Q. You say you talked with Sheriff Lee upstairs—do you remember talking with Deputy Sheriff Jones upstairs?

A. No, sir; I ain't never hold no conversation with him, no more than he come up there and speak to me.

Q. This was on April 13, 1963.

A. Yes, sir.

Q. You say you don't remember talking to Deputy Sheriff Jones?

A. No, sir.

Q. Do you remember talking with Sheriff Lee?

A. Yes, sir.

Q. Was this upstairs in the jail?

A. Yes, sir.

Q. What did you say to him?

A. I didn't say anything to him. He just told me that I wanted to talk with him, and he said the sheriff from Folks-ton told him that he wanted him to talk with me.

Q. That was Sheriff Lee said that?

A. Yes, sir.

Q. Did anybody else say anything to you while you were up there?

A. No, sir.

Q. Did anybody come in your cell where you were?

A. No, sir.

[fol. 173] Q. Now, do you know about what time it was when you were taken downstairs on April 13th?

A. About 9 or 10 o'clock, I imagine, that night.

Q. Do you remember being taken into the office?

A. Yes, sir.

Q. Do you remember who was in the office with you, if anyone?

A. Yes, sir; there was some in there, but I didn't know but two was in there.

Q. Can you name the two that you know who were in there?

A. Yes, sir.

Q. Who were they?

A. Mr. Sheriff Lee and Mr. Dudley.

Q. Do you remember Mr. Jones saying anything to you?

A. No, sir; he didn't say nothing to me.

Q. Do you remember Sheriff Lee saying anything to you?

A. Yes, sir.

Q. What did he say?

A. He just asked me—I can't remember now what all he asked me.

Q. Do you remember him asking you something?

A. Yes, sir; he asked me about signing a statement.

Q. What did you say?

A. Well, I didn't remember signing it. I didn't know what I was signing.

Q. Did he ask you any questions?

A. Yes, sir.

Q. Did you answer his questions?

A. Yes, sir; some of them.

Q. Did you see anybody writing anything down when you were being asked questions?

[fol. 174] A. Yes, sir.

Q. Did you see anybody writing anything down when you were answering the questions?

A. Well, Mr. Dudley, he was writing.

Q. Now, you had some stitches in your eye, didn't you?

A. Over my eye.

Q. Over your eye?

A. Yes, sir.

Q. Were you still in pain at this time?

The Solicitor General: Now, your Honor, I've objected to his leading questions. Now, that is completely leading—did you have any stitches in your eye, and were you in pain, and so forth. I object to it.

The Defendant's Attorney: All right, I'll withdraw the question, your Honor.

The Court: All right.

Q. (By the Defendant's Attorney) Can you tell the Court how you felt, Isaac?

A. Well, I felt pretty rough for about two or three weeks, more on my private than I did on my face.

Q. When you said you felt pretty rough, what did you mean, Isaac?

A. Well, I was paining a right smart.

Q. Were you painin a right smart when you were in the room with Sheriff Lee and Deputy Sheriff Jones?

A. Yes, sir.

Q. Now, after you were taken into custody up until the time you were taken upstairs had you been given anything to eat?

A. No, sir.

Q. Were you hungry?

A. Yes, sir; I could have eat.

[fol. 175] Q. Isaac, do you know what "freely and voluntarily" means?

A. I beg pardon?

Q. Do you know what "freely and voluntarily" means?

A. Freely and voluntary?

Q. Voluntarily?

A. No, sir; I do not.

Q. Do you know what is meant by "the statement can be used against you in court"?

A. Statement can be used against me?

Q. Statement can be used against you in court. Do you know what that means?

A. No, sir.

Q. Do you know what it means to be informed of your legal rights?

A. Well, that's like being good or something?

Q. Is that what it means to you, Isaac?

A. Yes, sir.

Q. Do you remember the statement being read to you over in the sheriff's office on the 13th of April?

A. Yes, sir.

Q. Now, Isaac, you stayed in jail up in Ware County from that Saturday until that Monday, didn't you?

A. Yes, sir.

Q. And then you were brought back over here?

A. Yes, sir.

Q. Is that right?

Q. Do you remember being brought into court when you came back over here on the 15th of April?

A. Yes, sir.

Q. Did you have a lawyer at that time?

A. When I came back over here?

Q. Yes.

A. No, sir.

[fol. 176] Q. Were any of your friends here?

A. No, sir.

Q. Isaac, at the time you were over there in jail in Ware County on the 13th did anybody tell you that you had a right to a lawyer?

A. Had to write me a lawyer?

Q. Had a right to a lawyer? Do you understand what that means?

A. You mean when I was in jail?

Q. In Ware County on the 13th when you were brought down to Sheriff Lee's office?

A. Not as I remember.

Q. Do you know whether or not anybody explained that statement to you? Do you know what "explain" means?

A. No, sir.

Q. Isaac, do you know whether or not anyone told you you could call your family?

A. No, sir.

Q. Isaac, do you know what "Constitutional rights" means?

A. Do you mean good or something?

Q. Is that what it means to you, Isaac?

A. Yes, sir.

The Defendant's Attorney: The witness is with you.

Cross examination.

Q. (By the Solicitor General) Now, Isaac, about what time were you picked up at Toledo on that day—on this Saturday, April 13th, 1963? About what time was it?

A. It was about—I'd just say 3 o'clock.

Q. You were actually picked up after dinner, then, about 3 o'clock? Is that right?

A. Yes, sir?

Q. Now, who was it picked you up? What was the boy's name?

[fol. 177] A. That picked me up?

Q. Yes. Was it T. W. Walker?

A. I believe it was T. W. Walker.

Q. It was T. W. Walker and another boy? Were they colored or white?

A. They were colored.

Q. So, actually, you were caught by two colored boys? Is that right?

A. Yes, sir.

Q. And they turned you over to Mr. Stokes? Is that right?

A. Yes, sir.

Q. And when those colored boys caught you they didn't hurt you any way, did they?

A. No, sir.

Q. Now, did Mr. Stokes hurt you in any way?

A. No, sir.

Q. And you were turned over then to the State Patrol? Is that right?

A. Yes, sir.

Q. And I believe you said you went to Dr. Jackson's office and then you went over to Waycross, and you got over there about 5:30 or 6 o'clock? Is that right?

A. Yes, sir.

Q. Now, when you were in the Waycross jail the first law officer you saw was Dudley Jones, wasn't it. Didn't he come up there and you hollered at him?

A. I'm not going to tell no lie on Mr. Dudley. I don't remember hollering at Mr. Dudley.

Q. Well, didn't you see Dudley on the third floor? Didn't you speak to him up there?

A. Yes, sir, I speak to him, but I don't remember holler-[fol. 178] ing at him.

Q. But, anyway, you spoke to him up there on the third floor that evening?

A. I spoke to him on the elevator.

Q. When you were going up?

A. Yes, sir.

Q. Well, what did you say to him?

A. Well, he—I just—he asked me did—something about

Q. What did he ask you?

A. I think something about the case. This case.

Q. Well, what did you tell him?

A. I didn't tell him anything. I just—I don't remember telling him anything, I don't believe.

Q. You didn't answer him? You said he asked you a question—you didn't answer him? You'd been knowing Dudley a long time, hadn't you?

A. Yes, sir. He just said, "What have you done got into?" That's all I remember him asking me.

Q. Did you answer him?

A. I just said, "Nothing," just like that.

Q. Now, on this occasion he wasn't talking to you extra loud any way, was he?

A. No, sir.

Q. He was talking to you completely nice, wasn't he?

A. Yes, sir.

Q. And you, in return, whatever you said was nice?

A. Yes, sir.

Q. Now, Dudley didn't try to hit you or beat you or say anything to you, did he?

A. No, sir.

[fol. 179] Q. And you say you saw him there and then went in the jail cell? Is that right?

A. Yes, sir.

Q. Now, later on you said you talked to the sheriff, I believe you said it was, in the jail cell up there?

A. Yes, sir.

Q. Sheriff Lee didn't holler at you or talk loud, did he?

A. No, sir.

Q. Did he talk to you as nice as I'm talking to you?

A. Yes, sir; he talked all right.

Q. He didn't beat you, did he?

A. No, sir.

Q. Then I believe you testified you went down in the interview room—in the office where he talked to you? Is that right?

A. Yes, sir.

Q. While you were in that office I believe you stated that Mr. Jones and Sheriff Lee and some other people were in there? Is that right?

A. Yes, sir.

Q. Did any of those people holler at you loud?

A. No, sir.

Q. Did any of them talk loud to you at all? Didn't they talk to you just like I'm talking to you now?

A. Well, if I was to say that I would be telling a lie.

Q. Did anybody beat you while you were in there?

A. No, sir; they didn't beat me, but they kind of scolded me a little. They didn't beat me or nothing.

Q. Nobody beat you or anything of that nature? That's right, isn't it.

A. Yes, sir.

[fol. 180] Q. Nobody hollered at you, did they?

A. No, sir; they didn't holler at me.

Q. All right, nobody threatened you that they were going to beat you, did they? Did anybody threaten you?

A. No, sir.

Q. What they did was Sheriff Lee asked you some questions didn't he?

A. Yes, sir.

Q. And you don't remember all the questions he asked you, do you?

A. No, sir.

Q. But he did ask you some questions concerning molesting a girl over at St. George—in that area—didn't he?

A. Yes, sir.

Q. And when he asked you those questions I believe you said Mr. Dudley Jones here had a pen and writing it down? Is that right?

A. Yes, sir.

Q. And in some of those questions he told you you had a right to have a lawyer if you wanted one, didn't he?

A. Well, if he did I don't remember.

Q. You won't say that he didn't tell you that, will you? You just don't remember? Is that right?

A. Like I told you, I don't remember.

Q. You don't remember?

A. No, sir.

Q. And you wouldn't say that he didn't tell you that whatever you said could be used against you in court, would you?

A. I remember him saying that.

Q. You remember him advising you that whatever you said could be used against you in court? You remember that? Is that right?

[fol. 181] A. Yes, sir.

Q. That's one of the several things Sheriff Lee told you? Is that right?

A. Yes, sir.

Q. And even though you knew that it could be used against you in court, he asked you questions and you went ahead and told him about it? Is that right?

A. Well, I told him some things.

Q. And when you got through telling Sheriff Lee those things and after Mr. Jones got through writing it down they asked you to read it, didn't they?

A. Asked me to read it?

Q. Yes.

A. No, sir; Mr. Dudley Jones knows I can't read it.

Q. Didn't he ask you to read it?

A. No, sir. He read it.

Q. All right, you say that he didn't ask you to read it—that he read it to you?

A. Yes, sir.

Q. Did he take his time to read it to you?

A. Well, I don't know. He just read it. I don't know how he took his time.

Q. Well, did he read it to you in just a normal, ordinary way?

A. Yes, sir.

Q. And you listened to it good while he was reading it, didn't you?

A. Yes, sir; I was listening.

Q. And when he got through reading it, you signed it, didn't you?

A. Yes, sir.

Q. Did you tell him that any part of that was wrong? Did you tell him that any portion of that statement was wrong that he read to you.

[fol. 182] A. I imagine I would if I had knowed what he was doing?

Q. He read it to you, didn't he?

A. Yes, sir.

Q. And when you heard him read it you signed it because that was right, didn't you?

A. I reckon so.

Q. And if he had read you something he hadn't told him you wouldn't have signed that, would you?

A. I don't know. I imagine I would. I don't know.

Q. You don't know whether you would or not if he had read you something wrong? Let me ask you this: Mr. Dudley has been treating you all right and been friendly to you?

A. Yes, sir.

Q. And Mr. Dudley has been friendly to you for how many years?

A. About twelve or thirteen, I imagine.

Q. All right, if he was friendly to you for twelve or thirteen years you weren't afraid of him, were you?

A. No, sir; I ain't never said I was scared of him.

Q. And so if something had been wrong you wouldn't have been afraid to tell him it was wrong, would you?

A. No, sir.

Q. So, there wasn't anything wrong with what he read off, because if it had been you would have told him because you weren't scared of him? Is that right?

A. No, I wasn't scared.

Q. And if he had read something wrong that you hadn't said, since you weren't scared of him you would have said, "Mr. Dudley, that ain't right," and you would tell him, "It ought to be this way," wouldn't you?

A. I imagine I would.

[fol. 183] Q. Now, not only didn't the sheriff or the deputy sheriff, Mr. Jones, do anything to you, but those other men there, did they bother you in any way—that were in the room? Did any of them fight at you or threaten you?

A. No, sir. They was all setting down.

Q. They didn't say anything to you, did they?

A. No, sir.

Q. As a matter of fact, nobody while you were in Ware County hit you or beat you up, did they?

A. No, sir.

Q. Nobody tried to raise their voice and holler at you or do anything to you, did they?

A. Not them.

Q. Well, did they ever do it in Ware County? Did anybody ever bother you?

A. They ain't nobody ever hit me there, but I ain't going to say they didn't never holler at me.

Q. I'm talking about when you were making the statement—they weren't hollering at you, were they?

A. Oh, no.

Q. If somebody hollered at you it was somebody out of the window later on, wasn't it?

A. Didn't anybody holler at me out of the window, no

more than my people sometimes hollered at me out of the window.

Q. Now, I believe you said you didn't remember whether or not he told you you had a right to get you a lawyer or not? Is that right?

A. No, sir.

Q. You don't remember whether he did say it or didn't say it?

A. No, sir.

Q. He didn't refuse you the right to use the telephone? Did you ask him to use the telephone and he wouldn't let you?

[fol. 184] A. I didn't never ask him.

Q. In other words, as far as you know if you had wanted to use the phone you could have used it? Is that right?

A. I don't know if he would or not.

Q. I mean as far as you know, since he didn't refuse you?

The Defendant's Attorney: I think he answered the question, your Honor.

The Court: I think so.

The Solicitor General: That's all.

Redirect examination.

Q. (By the Defendant's Attorney) Isaac, did you consider Mr. Dudley a friend of yours?

A. Yes, sir.

Q. Did you think that he would help you?

A. Yes, sir; I believe he would.

Q. Isaac, when you were in the sheriff's office of Ware County were you afraid?

A. Yes, sir; I was—I was scared a little.

Q. Do you know what "normal" and "ordinary" mean, Isaac?

A. Normal and ordinary?

Q. Yes.

The Solicitor General: Your Honor, that would be a conclusion, and so on. I don't see what the purpose of that question is. I haven't objected before, but he could go all through the dictionary and ask him what words mean.

The Court: Let him answer the question.

Q. (By the Defendant's Attorney) Do you know what "normal" and "ordinary" mean, Isaac?

A. Like you're sick, or something?

Q. Is that what it means to you?

[fol. 185] A. I imagine so, yes, sir.

Q. Isaac, did you know you had a right to use a telephone?

A. Yes, sir.

Q. Who told you?

The Solicitor General: I object to that, your Honor. He's answered the question. The last question would be calling for hearsay, anyway. It doesn't make any difference so long as he knew.

The Defendant's Attorney: Your Honor, I have a right to inquire as to the source of his knowledge.

The Solicitor General: It would be a self-serving declaration. If he knew, nothing else would be pertinent.

Q. (By the Defendant's Attorney) Do you understand my question, Isaac?

A. You say do I have a right to use the telephone?

Q. Yes.

The Solicitor General: I think he already asked the question and he's answered it. Now, he wants to go back and elicit another answer.

The Defendant's Attorney: I asked him if he understood the question, your Honor.

The Solicitor General: He's trying to cross examine his own witness now.

The Court: Go ahead with the question.

Q. (By the Defendant's Attorney) The question is did you understand the question about your right to use the telephone while you were in jail?

A. No, sir.

Q. Did anyone tell you you had a right to use the 'phone while you were in jail?

A. No, sir.

[fol. 186] The Solicitor General: I ask that that be excluded because it's obvious that he rephrased the question and re-asked it for the purpose of getting a different answer from him. The question was clear and answered clearly,

and when he re-asked the question it was for the sole purpose of getting him to change the answer.

The Defendant's Attorney: Your Honor, that doesn't state a legal reason to exclude it.

The Court: Well, go ahead with the questions.

The Defendant's Attorney: That's all.

The Solicitor General: Come down.

(Witness excused)

The Defendant's Attorney: The defendant rests.

The Solicitor General: Your Honor, we are not offering anything. We have finished.

The Court: Are you through?

The Defendant's Attorney: I have another motion, your Honor.

The Court: Another motion?

The Defendant's Attorney: Yes, sir; an oral motion.

The Court: All right.

MOTION TO QUASH INDICTMENT AND OVERRULING THEREOF

The Defendant's Attorney: Your Honor, we move that this indictment No. 1488, which was returned by the grand jury of Charlton County on October 6, 1964, be quashed, the reason being that this indictment puts the defendant, Isaac Sims, Jr., in double jeopardy, in violation of his rights under Article 1, Paragraphs 3 and 5 of the Constitution of the State of Georgia of 1945, and under the 5th Amendment to the Constitution of the United States, being applicable to the State of Georgia by the 14th Amendment thereto, by virtue of the fact that the Supreme Court of Georgia in the Isaac Sims case sent the case back for [fol. 187] retrial on the indictment then pending against the defendant, and the defendant has subsequently been indicted a second time, and the Constitution of both the United States and of the State of Georgia say that a man shall not twice be put in jeopardy for the same offense, and the return of the second indictment—there are two indictments in the case, and the return of the second indictment is improper. He was sent back to be tried on the original indictment, not to be tried on the indictment that was returned yesterday. The Supreme Court of Georgia specifically directed that this defendant be given a new trial,

and we'd like to enter in evidence on this the present indictment, which is 1488, and we'd first like to have the Clerk produce and make a part of the record the remittitur from the Supreme Court of Georgia sending the case back to the City Court of Reidsville, which should have sent the case back to this court as a part of the record. It was sent back for retrial of the indictment which was originally returned against him. The issue of whether or not they were systematically and arbitrarily excluding negroes from the jury was not the issue passed upon. As a matter of fact, the Supreme Court Justices specifically rejected that issue and refused to consider it in this opinion, and this defendant is being put in double jeopardy, because he is not being tried on the same indictment, but he is being tried on a new indictment, and the law provides that when a defendant appeals a case and the case is returned he should be sent back and tried on the same indictment. It does not provide that he can be re-indicted and tried on a different indictment, and, your Honor, we move that the indictment be quashed against the defendant—No. 1488—for the reasons previously stated.

The Court: (After argument of counsel) I will overrule the oral motion.

[fol. 188] The Defendant's Attorney: Your Honor, the Court has reserved its ruling on evidence that we offered on the challenge to the array and the plea in abatement going to the composition of the petit jury, and I'd like to call this to the Court's attention; and also, your Honor, I'd like to call to the attention of the Court on the motion for the change of venue which the Court has already ruled upon as to the venue change aspect of the motion, but I'd like to call the Court's attention that we prayed in that motion as follows: "The movant prays that his motion be inquired into (which the Court, of course, has done) and that the Court enter an order changing the venue for the trial of said indictment (which, of course, the Court has declined by overruling the motion)," and then we go on and say "in the alternative grant such other relief or order as will secure to the movant a jury and forum uninfluenced by local prejudice and bias."

Your Honor, we ask the Court to consider several possible alternatives—First, to increase the size of the venire in the case. The present venire is about 99 jurors. To in-

crease the size of the venire so that the defendant would have a wider choice and a wider section of the community to be represented on the jury panel; and, secondly, we ask the Court to admonish any jurors that have actually been impaneled not to discuss the case, and to disregard any newspaper items or any hearsay evidence; and, thirdly, that the jury from the time it is impaneled be kept together and not permitted to return home until the case is terminated.

Those are our alternatives, your Honor. They are not all the alternatives, but we'd like to suggest wherever we could to the Court and be as helpful as we possibly can to the Court.

The Solicitor General: I feel that the Court is highly [fol. 189] capable of running the case, and the State wouldn't have any suggestions.

The Defendant's Attorney: Your Honor, we didn't intend to imply any lack of capacity of the Court.

OVERRULING OF MOTION TO SUPPRESS ILLEGALLY OBTAINED EVIDENCE

The Court: Now, as to your other motion—the motion to suppress illegally obtained evidence—I overrule that motion, too.

All right, now, what is next?

The Solicitor General: Ready to join issue so far as I'm concerned.

The Court: Do you want a ruling on these?

The Defendant's Attorney: Yes, sir. I think it would clear the record in case there was an appeal.

The Court: What you are talking about there is what? What are you talking about?

The Defendant's Attorney: Your Honor, we're speaking of Defendant's Exhibits 5, 6, 7, 8, 9, 10, and 17, and Defendant's Exhibits 11, 12, 13, 14, 15, and 16, which were offered in support of defendant's plea in abatement and challenge to the array, which the Court reserved ruling upon at the time they were offered.

The Court: I will rule them inadmissible.

The Defendant's Attorney: Your Honor, will you make that ruling part of the record in the case?

The Court: Are you ready now?

[fol. 190]

ACKNOWLEDGMENT OF SERVICE**[omitted in printing]**

JUDGE'S CERTIFICATE

I hereby approve and certify that the within and foregoing pages, numbered 1 through 121, constitute a true, correct, and complete transcript of the evidence taken upon the trial of the defendant's special pleas and motions as had before me in the above-captioned case commencing on October 7, 1964, and are approved as a part of the record herein.

This, the 15 day of January, 1965.

Ben Hodges, Judge, Charlton Superior Court, Waycross Judicial Circuit.

[fol. 191] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA

OCTOBER TERM, 1964.

CHARLTON SUPERIOR COURT

No. 1488

THE STATE

VS.

ISAAC SIMS, JR.

INDICTMENT FOR RAPE

TRANSCRIPT OF EVIDENCE

The Court: You may proceed with the trial.

MRS. NOLA JEAN ROBERTS CRAWFORD was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Solicitor General) Would you state your name for the record, please?

A. Nola Jean Crawford.

Q. Are you the former Nola Jean Roberts?

A. Yes, I am.

Q. You were Nola Jean Roberts back on April 3, 1963?
Is that correct?

A. Yes, sir.

Q. Now, where did you live at that time, Nola Jean?

A. St. George, Georgia.

Q. St. George, Georgia?

A. Yes, sir.

Q. If there is no objection I'll just call you Miss Roberts.

A. All right.

Q. Where did you live at that time in reference to St. George?

A. Three miles out of St. George towards Folkston on the St. George road.

Q. And what county was that in?

A. Charlton County.

Q. And what State was it in?

[fol. 192] A. Georgia.

Q. Now, who did you live with at that time, Nola Jean?

A. My parents.

Q. And who are your parents?

A. Lonnie and Vera Roberts?

Q. And you lived in the home with them? Is that right?

A. Yes, sir.

Q. Now, did anything unusual happen to you on or about the 13th day of April last year?

A. Yes, sir.

Q. Nola Jean, where were you around ten o'clock on that Saturday morning of April 13, 1963?

A. I was coming from St. George going home.

Q. You'd been to St. George?

A. Yes, sir.

Q. And you left St. George going home—how would you have to go from St. George to get to your home?

A. Come out three miles on the St. George-Folkston road.

Q. Is that a paved road?

A. Yes, sir. And turn to the left and go one mile and around one-tenth.

Q. Is that a dirt road, Nola Jean?

A. Yes, sir.

Q. Now, from the paved road to your house, is that a straight road or is there a curve in it.

A. There is a curve in it.

Q. Now, Nola Jean, you said you left St. George going home—how were you traveling?

A. In a car.

Q. Now, what kind of car were you driving?

[fol. 193] A. A Dodge Lancer.

Q. Was anyone with you?

A. No, sir.

Q. Now, since you were by yourself you were driving?

A. Yes, sir.

Q. Nola Jean, on that occasion when did you first notice something unusual?

A. Well, after I got around a curve I heard a—

Q. Excuse me, Nola Jean. Was there anything unusual on the paved road?

A. No, sir.

Q. You turned off of the paved road and started on the dirt road? Is that right.

A. Yes, sir.

Q. Now, what about in relations to that curve you referred to on the dirt road between the paved road and your house did something happen?

A. Well, just as I got out of the curve I heard a racket behind me, and I looked in the rear view mirror and I saw a car coming behind me, and the car was coming pretty fast, and he hit—the car hit the left side of my car and swerved it towards the right side of the road, and it hit again and knocked me out in the ditch and turned me completely around headed back towards the highway.

Q. Now, Nola Jean, your car, I believe you said, was knocked in the ditch and wrecked? Is that right?

A. Yes, sir.

Q. Immediately upon your car being knocked in the ditch what happened then?

A. A colored man jumped—had got out of his car, came to mine, opened the door and pulled me out.

[fol. 194] Q. Now, Nola Jean, was that colored man the person driving the car that ran into the back of yours?

A. Yes, sir.

Q. Now, you say he came to your car and pulled you out—what did he say, if anything, at that time?

A. He asked me if I had any money.

Q. What did you tell him?

A. I told him, "Yes."

Q. What happened then?

A. He looked in my billfold, took what money I had in there out—in the bill fold out—and that's all that happened at that time.

Q. Now, at this particular point and place we have reference to in that particular area, is that in Charlton County, Georgia?

A. Yes, sir.

Q. Now, about how far was that from your house at that time?

A. I'm not sure.

Q. Would it be approximately a half a mile?

A. I think so, yes, sir.

Q. Now, after he pulled you out of the car, Nola Jean, and got the money and pulled you on out of the car, tell the jury exactly what happened then. What did you do then when he was pulling you out, Nola Jean?

A. Well, I was very scared and I told him my money was in my bill fold and he took the money out, and then he got behind me and started pushing me towards the woods, and I kept hollering for help and he kept putting his hand over my mouth and told me to shut up or he'd kill me, and he kept doing that, and then after he got me a ways in the woods he pushed me onto the ground and pulled my clothes—pants—off of me and raped me, and he kept choking me.

Q. Now, Nola Jean, when you say "raped," he actually put his private parts in your private parts?

[fol. 195] The Defendant's Attorney: We object to that, your Honor. That is a most leading question, and I object to the form of the question.

The Court: All right.

Q. (By the Solicitor General) Well, I will ask you did he do that? Did he put his private parts in your private parts?

A. Yes, sir.

Q. And in the meantime while he was doing that how had he treated you in the way of violence, if any?

A. He kept choking me.

Q. He kept choking you?

A. Yes, sir.

Q. And while he was choking you what would he say, Nola Jean?

A. Every time I would ask him to please stop he would tell me to shut up or he would kill me.

Q. And what happened as soon as he completed raping you? What happened next?

A. He choked me one more time, and as he did I blacked out.

Q. Nola Jean, did you resist with all your power?

A. Yes, sir; I did.

Q. And I believe you just stated when he finished raping you that he choked you and you blacked out again?

A. Yes, sir.

Q. And do you remember anything of the way he departed the scene after that?

A. He ran off in the woods.

Q. And what direction in relation to the road, if you know, Nola Jean?

A. Off on the road going towards Toledo—back off.

Q. I didn't hear you.

A. Going towards Toledo.

Q. And what did you do then, Nola Jean?

[fol. 196] A. I managed to get to the car when I got my clothes back on—I had went to the car and managed to get the mail and the car key.

Q. Would your car run, Nola Jean?

A. No, sir.

Q. You don't know about the other car, do you?

A. I don't know about the other car. And I had went home. I had walked to my house.

Q. Nola Jean, don't tell what anybody else said, but when you were getting to your house what were you doing, if anything?

A. I called my mother as soon as I was close enough to the house that she could hear me, I called her and she came out where I was at.

Q. Did you go on in the house then?

A. She took me on in the house.

Q. When you got in the house whereabouts in the house did you go?

A. I laid down on the couch in the living room.

Q. And did you stay there on the couch a little while in the living room?

A. Yes, sir.

Q. Nola Jean, what happened after then?

A. Well, while I was on the couch my mother called Bob Adkins and they came down.

Q. Is that an ambulance?

A. Yes, sir. And they came down to get me and took me to the hospital.

Q. Now, you went to the hospital in the ambulance?

A. Yes, sir.

Q. What hospital did you go to, Nola Jean?

A. McCoy-Jackson Hospital here in Folkston.

[fol. 197] Q. And that was on Saturday, I believe?

A. Yes, sir.

Q. How long did you stay in the hospital as a result of this attack on you.

A. Around a week.

Q. And, Nola Jean, the colored man that raped you on that occasion, do you see him in the court room?

A. Yes, sir.

Q. Would you point at the man that raped you?

A. Over here at the second table (indicating).

The Solicitor General: Let the record show that she's pointing at the defendant, Isaac Sims, Jr., as being the man that raped her.

Q. Nola Jean, at the time that you were attacked by this man what was your physical condition in relation to periods, and so forth?

A. I was just ending my period.

Q. What type of clothes were you wearing? Tell the jury what you had on.

A. I had on a pair of long slacks, a girdle, a pair of underpants, and a guard.

Q. And what did you say happened to your clothes when you were raped?

A. He pulled them off.

Q. Now, Nola Jean, all the time that he was pulling you out and raping you just what was he doing? Tell the jury what he was doing and what he was saying?

A. I was trying to get away from him and I kept holler-ing for help and trying to get away from him, but he kept putting one hand over my mouth, and he had one arm around me, holding me.

Q. You said a while ago he kept saying something—what did he keep saying at the time he was pulling you out and raping you?

[fol. 198] A. He kept saying he would kill me.

Q. And you said all this happened in Charlton County, Georgia?

A. Yes, sir.

The Solicitor General: She's with you.

Cross examination.

Q. (By the Defendant's Attorney) Miss Roberts, you are now Mrs. Crawford, aren't you?

A. Yes, sir.

Q. How long have you been married?

A. Since December the first, 1963.

Q. Were you engaged at the time this allegedly happened?

A. No, sir, I wasn't

Q. You became engaged since then?

A. Yes, sir.

Q. Do you now live in Charlton County?

A. Yes, sir; I do, with my family.

Q. On the Lonnie Roberts road?

A. Yes, sir.

Q. Now, I think you testified that this allegedly happened on the paved road—the Lonnie Roberts Road—that leads from 23 to your house?

A. No, it happened on a dirt road.

Q. It happened on a dirt road?

A. Yes.

Q. Is that the Lonnie Roberts road?

A. Yes, sir.

Q. That road is named after your father?

A. It isn't named after my father, no, sir.

Q. Why is it called the Lonnie Roberts road?

A. I couldn't answer that?

Q. But it is called that?

A. I don't know. I have heard that.

[fol. 199] Q. And this road, would you say, is about maybe twelve feet wide?

A. Probably.

Q. And it is a sort of white sandy road?

A. Yes, sir.

Q. And there are gullies on each side?

A. Yes.

Q. Actually, the road leads into the Okefenokee Swamp, doesn't it?

A. No, sir; it doesn't.

Q. It's in the area where the swamp is, isn't it?

A. Well, the swamp is on further up.

Q. When you turn left off of the paved road, which is

Highway 23, onto the dirt road, that road goes on out towards the swamp past your house, doesn't it?

A. It stops—it just passes my house.

Q. And beyond the house it curves around your house to the swamp road?

A. Yes.

Q. There are two curves on this road, isn't there?

A. One curve.

Q. You turn left and you go down the road a way and then you turn back, don't you?

A. There's a curve towards the right.

Q. And then it straightens up and curves back toward the left?

A. Yes.

Q. And right beyond that last curve there's a bridge, isn't there?

A. Well, it's kind of straight going towards the bridge.

Q. But there's a bridge there?

A. Yes.

Q. And I think you've testified on each side of the road there's a gully and there are pine trees? Is that right?

[fol. 200] A. Yes.

Q. And there's a lot of other heavy foliage?

A. Yes.

Q. And in a lot of areas there there's moss, isn't there?

A. Well, not exactly moss. There's heavy foliage.

Q. And sort of watery and slippery?

A. No.

Q. Had it rained at any time within a day or so before this event occurred?

A. No.

Q. Did it rain on the 13th day?

A. No.

Q. Now, I believe you testified that you heard a racket behind you—there was a car coming behind you that was making a racket.

A. Yes, there was.

Q. And that you looked in the rear view mirror?

A. Yes.

Q. Did you believe then that the car was going to try to run into you?

A. No, sir; I didn't.

Q. You knew that there wasn't quite enough room on the road for it to pass, didn't you?

A. Yes.

Q. Why didn't you speed up?

A. Well, I didn't think about speeding up.

Q. And your car was a 1963 Dodge Lancer, wasn't it?

A. Yes.

Q. The car that was behind you was a 1954 Chevrolet; wasn't it?

A. I don't know.

Q. Anyway, it was an old car, wasn't it?

A. Yes, it was.

[fol. 201] Q. And you knew it was an old car because you could hear it run? Is that right?

A. Yes.

Q. But you didn't speed up, did you?

A. No, I didn't.

Q. Did you later on have your car repaired?

A. No, sir; I didn't.

Q. You never had it repaired?

A. No.

Q. And your car was knocked around twice? Is that right?

A. Yes, it was.

Q. Now, Mrs. Crawford, I hate to ask a lady this, but approximately how old were you at the time this happened?

A. Twenty-nine.

Q. And I'd like to ask you another question: Approximately how much did you weigh at the time this happened?

A. Around about 160 or 65.

Q. Would you say that you weigh now pretty much what you weighed back on April 13, 1963?

A. No, sir; I don't. I'm heavier.

Q. You're heavier now?

A. Yes.

Q. Now, Mrs. Crawford, the first time that you identified Isaac Sims, Jr., as the person who allegedly attacked you was in this court room last October, 1963, wasn't it?

A. Yes, it was.

Q. And that was over a space of some five months? Is that right?

A. I guess so.

Q. Now, Mrs. Roberts, you had seen Isaac near where you lived before, hadn't you?

A. I'm sure I had.

[fol. 202] Q. Isaac used to haul pulpwood? Is that right?

A. Yes, sir.

Q. And there's a church near where you live, isn't there?

A. There's a church and a cemetery.

Q. And you've seen Isaac on occasions when he was working pulpwood and drive by the church and cemetery, haven't you?

A. No, I didn't see him very much.

Q. But you believe that you've seen him in the past when he was working on the pulpwood truck? Is that right?

A. Yes, sir.

Q. But, if you have your testimony correctly, the first time you identified Isaac Sims as the person who allegedly did this to you was in October of 1963? Is that correct?

A. Yes, sir.

The Defendant's Attorney: Thank you.

The Solicitor General: You may come down.

(Witness excused)

MRS. LONNIE ROBERTS was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Solicitor General) You are Mrs. Lonnie Roberts?

A. I am.

Q. What relation are you to Nola Jean Roberts Crawford?

A. My daughter.

The Defendant's Attorney: Excuse me, Mr. Solicitor, but we will stipulate, your Honor, that this lady is the mother of Nola Jean Roberts, and that she saw her on April 13, 1963, in a disheveled and bruised up condition.

The Solicitor: It won't take but a minute or two. I want her to tell the jury just like it was.

Q. Mrs. Roberts, you are the mother of Nola Jean Roberts [fol. 203] Crawford?

A. I am.

Q. And you remember the occasion back on April 13, 1963, when something happened to your daughter?

A. I won't forget it.

Q. Now, Mrs. Roberts, about what time of the day and where were you when you found out something was wrong on that occasion?

A. I was at home.

Q. And about what time of day was it, Mrs. Roberts?

A. It was around 11:30, I think. Somewhere about 11 or 11:30.

Q. That was in the morning?

A. In the morning.

Q. Mrs. Roberts, where was your daughter, Nola Jean, when you first discovered there was something wrong?

A. Coming up the lane toward the house.

Q. And would that be from the direction of the highway?

A. Yes.

Q. And what was she doing when you first observed her and noticed there was something wrong?

A. Well, she could hardly walk, and she called me and I heard her call, and I went to the door to see why she was calling me, and I saw her up the lane and it was all she could do to walk, and I ran to her, and her face was streaming blood and it was all swollen and red, and she was just bruised and dirty. Her clothes were in a terrible condition; and I asked her what was the matter, and she says, "I'll tell you when I get to the house," and I went onto the house, carried her in, and I laid her down on the sofa in the living room, and I went to the bath room and got a wash cloth to wash her face, because I thought possibly she'd been in an automobile wreck; and I asked her what happened to her, and she said a colored man ran her in the [fol. 204] ditch; and I said, "Where is he?" She said, "He ran through the woods", and her father asked her, "Did he do anything to you?" And she said, "Yes," and I went to the telephone to try to call help.

Q. Did you try to call the law at that time, Mrs. Roberts?

A. I tried to call the law.

Q. Who else did you try to call?

A. And I didn't get anybody to answer the 'phone at that particular time, and I called Adkins Funeral Home to come get an ambulance and bring me to the hospital, and as soon as I called him I called Dr. Jackson and asked him what to do for her until I got her up there, and he told me to bring her just like she was and not do anything until she got over there—to keep her warm, and I called the law and I got hold of them at that time.

Q. Where was she during this time, Mrs. Roberts?

A. She was lying on the sofa in my room—in my living room.

Q. Did the ambulance come then?

A. They came immediately just as fast as they could come.

Q. When the ambulance arrived at your house what happened then?

A. Well, they took her and put her in the ambulance and I rode with her and they brought her over to Folkston to the hospital.

Q. What doctor did you bring her to, Mrs. Roberts?

A. Dr. Jackson.

Q. And what hospital was she brought to?

A. McCoy-Jackson Hospital.

Q. As a result of that attack how long did she stay in the hospital?

A. She was in there until the following Friday.

Q. From that Saturday until the following Friday?

A. From Saturday until the following Friday.

[fol. 205] The Solicitor General: She's with you.

Cross examination.

Q. (By the Defendant's Attorney) Mrs. Roberts, I want to ask you a couple of questions, please. I believe that you testified that your daughter came—you saw your daughter outside the house, and that you asked her what had happened, and she said she'd been in a wreck? Is that right?

A. She told me that when she came in the house. Not outside.

Q. Inside the house she told you she'd been in a wreck. Is that right?

A. She said a colored man ran her into the ditch.

Q. Yes, the colored man had run her into the ditch. Now, Mrs. Roberts, where was your husband at this time?

A. My husband was at home.

Q. Was he in the same room with you and your daughter?

A. Yes.

Q. Then your husband inquired, and then she told that the colored man had done something else? Is that right?

A. Yes.

Q. All that you know about what happened is what your daughter told you? Is that correct?

A. That's all.

The Defendant's Attorney: That's all.

Redirect examination.

Q. (By the Solicitor General) You saw your daughter and her condition at that time, didn't you?

A. I saw her condition and I know what she went through—I mean I know what condition she was in.

Q. And that condition is what you just explained to the jury? Is that right?

A. That's right.

[fol. 206] Q. What about her eyes at that time, Mrs. Roberts?

A. It took two weeks for the blood to get out of her eyes. You couldn't see her eyes for the blood.

Q. What about the other parts?

A. And her nose was bleeding and her mouth was bleeding—streaming down her face, and her clothes were all bloody, and she was in a frightful state.

Q. And she told you she was run in the ditch and then she told you she was raped? Is that right?

A. Yes.

The Solicitor General: You can come down.

Recross examination.

Q. (By the Defendant's Attorney) Mrs. Roberts, you understand that I'm just trying to get at the truth?

A. Well, this is the truth.

Q. I realize that. Mrs. Roberts, the only thing that you're testifying about as to how this happened is what your daughter told you? Is that right?

A. I'm testifying to her condition as I saw her and what she told me.

Q. But you don't know how she got in that condition, do you?

A. No, I didn't see it, if that's what you mean. I wasn't there.

The Defendant's Attorney: That's all.

(Witness excused.)

NOAH STOKES was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Solicitor General) You name is Noah Stokes?

A. Yes, sir.

Q. Where do you live, Mr. Stokes?

[fol. 207] A. I live at Toledo.

Q. What county is that in?

A. Charlton County.

Q. Mr. Stokes, do you know one T. W. Walker?

A. Yes, sir.

Q. Do you know Arthur Lee Walker?

A. Yes, sir.

Q. Do you know Isaac Sims, Jr., the defendant in this case?

A. Yes, sir.

Q. Mr. Stokes, do you remember the occasion back on April 13th, 1963, when Nola Jean Roberts at that time was attacked?

A. Yes, sir.

Q. Now, Mr. Stokes, where do you live in relation to Folkston and St. George?

A. Well, it's fifteen miles—well, it's about seventeen miles south of Folkston.

Q. Where is that in relation to St. George?

A. About five miles north of St. George.

Q. I will ask you, Mr. Stokes, do you know Nola Jean Roberts?

A. Yes, sir.

Q. How long have you been knowing Nola Jean Roberts, who is now Nola Jean Crawford?

A. Well, I'd say all her life.

Q. Approximately how long have you known the defendant, Isaac Sims, Jr.?

A. I barely know him.

Q. Mr. Stokes, now, back to the occasion, don't tell what was said, but did you receive a report about Nola Jean being attacked?

The Defendant's Attorney: I object to that, your Honor. That's a leading question.

[fol. 208] The Solicitor General: I will withdraw it.

The Court: All right.

The Solicitor General: I will withdraw the question.

Q. You stated that you knew about the occasion? Is that right?

Yes, sir.

Q. Now, when you knew about the occasion, did you know about it on the day that it happened?

A. Yes, sir.

Q. About what time of the day did you learn about that, Mr. Stokes?

A. I'd say between 11:30 and 12 o'clock.

Q. Now, what did you do, if anything, when you learned about the occasion when Nola Jean was attacked?

A. I went out to what we call the Lonnie Roberts road where they claimed that the attack had happened, and I saw Homer Allen out there.

Q. Now, don't tell what was said. Go ahead.

A. And then I came back and went back to our quarters where we had colored people living working turpentine.

Q. Now, what do you call that quarters, Mr. Stokes?

A. We call that Toledo.

Q. All right, sir. Then what did you do?

A. Well, I went to several of the houses—I wouldn't know—two or three or four of them—and told them what had happened, and that if a strange man came in there—I didn't know who they were looking for, but if a strange man came in there to be sure and tell me—to let me know.

Q. On that occasion that you have just referred to, Mr.

Stokes, did you talk to one T. W. Walker and one Arthur Lee Walker on that day?

[fol. 209] A. Yes, sir.

Q. I believe you said that you went into the quarters about 11 or 11:30 that day?

A. Well, it was about 12.

Q. Around 12?

A. Yes.

Q. After you had seen the Walkers and talked to them and the other people, did you see either one of the Walker boys later that day?

A. Yes, about 3:30 that afternoon.

Q. Which one did you see?

A. I saw both of them.

Q. Which one did you see first?

A. Well, I saw T. W. first.

Q. And when you saw T. W., don't tell what he said, but did he give you a message.

A. Yes.

Q. When he gave you this message what did you do, Mr. Stokes, in relation to that information? Tell what you did, now.

A. Well, I went to T. W.'s house.

Q. T. W. who, for the record?

A. How's that?

Q. For the record, T. W. Walker?

A. T. W. Walker—his house.

Q. And he lived at Toledo?

A. Yes, sir.

Q. And about what time did you go to his house, Mr. Stokes, if you know—approximately what time?

A. 3:30—something like that.

Q. And when you got to his house who did you see or what did you do at that time, Mr. Stokes?

[fol. 210] A. Well, Isaac Sims was sitting on the porch with his feet down on the ground.

Q. And who was there at that time besides Isaac Sims?

A. Well, there was so many I don't remember. I'd say there was eight or ten or twelve or fourteen people around there.

Q. All of them colored or white?

A. All of them colored.

Q. All of them colored, and you were the only white person there?

A. A fellow or two went with me.

Q. But the rest of them were colored people?

A. Yes, sir.

Q. Now, were T. W. Walker and Arthur Lee Walker there?

A. Yes, sir.

Q. And when you saw Isaac Sims, Jr., there at that time what did you do, if anything, at that time, Mr. Stokes?

A. I just drove the car up and opened the door and got out and told him to get in, and he got in.

Q. And what did you do then?

A. I carried him back to the highway, about a half a mile, and then my brother-in-law came and I told him to go get the sheriff, and he went on out in the woods where the crowd was, and pretty quick two patrolmen came up there and got him.

Q. And you turned him over to the two State Patrolmen?

A. Yes, sir.

The Solicitor General: He's with you.

Cross examination.

Q. (By the Defendant's Attorney) Mr. Stokes, approximately how far is Toledo from the Lonnie Roberts road?

A. Well, it's, I'd say, 5 or 5½ miles.

[fol. 211] Q. About 5½ miles?

A. Well, where the road turns off of the highway it wouldn't be over 4½ or 5.

Q. You say where the road turns off the highway—do you have reference to Highway 23?

A. That's right.

Q. And the road that turns off the highway is the Lonnie Roberts road?

A. Well, that's what we call it. It goes to Mr. Lonnie Roberts' house.

Q. Where the Lonnie Roberts road runs into the Highway 23 it's about 5 or 5½ miles to Toledo? Is that right?

A. 4½ or 5, or something like that.

Q. In which direction is Toledo with respect to the intersection of the Lonnie Roberts road and Highway 23?

A. Well, it's between the Lonnie Roberts road and Folkston, south, back this way—Toledo is.

Q. Coming up to Folkston? Is that right?

A. That's right.

Q. Now, is there any other highway or road that you know of that leads from the intersection of the Lonnie Roberts road and Highway 23 to Toledo?

A. Any other intersection into it?

Q. Well, let me put it this way, Mr. Stokes: Now, at the intersection of the Lonnie Roberts road, the dirt road, and Highway 23 are there any other roads that lead up to Toledo other than Highway 23?

A. Not coming to Toledo, no.

Q. If one was on the Lonnie Roberts road he'd have to come up Highway 23 in order to get to Toledo? Is that right?

A. Well, or go through the woods. There's a firebreak [fol. 212] road that runs out in the woods, but between the river and the Okefenokee that's the only road.

Q. I didn't get that, sir. You said between the river and the Okefenokee?

A. And 23.

Q. And what river is that?

A. St. Marys River.

Q. The St. Marys River?

A. Yes.

Q. So, Toledo is between the St. Marys River and Highway 23? Is that correct?

A. Yes—it's on 23.

Q. Now, you stated there are some woods in this area—could you describe the area generally from the Lonnie Roberts road up to Toledo?

A. Well, it's just woods and firebreaks—what we call firebreaks. Truck trails that go off in the woods, but there's one road that goes up to the Crews between my house, and I live between the Lonnie Roberts road and Toledo.

Q. Is there any other road?

A. Well, I'd say there's nothing but firebreak roads.

Q. And firebreak roads are little roads that come into the main road from the woods? Is that right?

A. Yes.

Q. In other words, they don't run in the same direction as Highway 23?

A. No.

Q. Now, not only do you have trees out there in the woods, but you have heavy foliage, don't you?

A. Yes.

[fol. 213] Q. And there's a lot of weeds and stuff growing underneath the trees and things of that sort? Is that right?

A. Well, there's little bushes and gallberries.

Q. And, also, some of this area is sort of marshy and swamp like, isn't it?

A. Yes, there's ponds.

Q. And these ponds were there in 1963 in April, weren't they?

A. Yes.

Q. If one ran up through the woods about five and a half miles it would be likely that his clothes would be torn and muddy, wouldn't it?

The Solicitor General: Now, your Honor, that would be a conclusion. He wouldn't know whether his clothes would be torn and muddy or not. It's immaterial and just delaying the case—just taking up unnecessary time. It has nothing to do with the case.

The Defendant's Attorney: Your Honor, I think it's very material and the jury should hear it—they should know the character of the land out there and know the probability of whether or not a man could travel through the woods.

The Court: Well, ask him the condition of the woods.

The Defendant's Attorney: I think he's answered that, your Honor, but I'm trying to show something else.

Q. Mr. Stokes, Isaac Sims didn't work for you, did he?

A. No.

Q. And he didn't live in the quarters, did he?

A. No.

Q. And that's why you took him and put him in the car?

A. No, that's not why.

Q. You say that when you arrived there in the quarters [fol. 214] the defendant Sims was sitting on the porch with his feet on the ground? Is that correct?

A. Yes.

Q. And there were some other colored people around—about twelve or fourteen?

A. Yes.

Q. Is that right?

A. Yes.

Q. And those people worked for you?

A. Well, most of them was children. Some grown people. Yes, they all worked for us.

The Defendant's Attorney: Thank you.

(Witness excused).

T. W. WALKER was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Solicitor General) Your name is T. W. Walker?

A. Yes, sir.

Q. T. W., where do you live?

A. Toledo.

Q. Is that in Charlton County?

A. Yes, sir.

Q. T. W., how old are you?

A. Thirty-one.

Q. You're thirty-one?

A. Yes, sir.

Q. Do you know the defendant here, Isaac Sims, Jr.?

A. Yes, sir.

Q. The defendant sitting over there—you know him?

A. Yes, sir.

[fol. 215] Q. About how long have you known him, T. W.?

A. Oh, about ten years.

Q. Did you know Miss Nola Jean Roberts at that time?

A. Yes, sir.

Q. And do you remember the occasion back on the 13th day of April, 1963, when she was attacked?

A. Yes, sir.

Q. Do you know Mr. Noah Stokes?

A. Yes, sir.

Q. Do you work for him, or what's your connection with him?

A. He was my boss man.

Q. He was your boss man?

A. Yes, sir.

Q. Now, on the day that Nola Jean Roberts was attacked did you see Mr. Stokes on that day?

A. Yes, sir.

Q. About what time of day did you see him?

A. See Mr. Stokes?

Q. Yes.

A. About 2 o'clock.

Q. Was that in the day time?

A. Yes, sir.

Q. Now, after you saw him did he say anything to you?

A. No, sir—

Q. Did you hear Mr. Stokes say anything about this attack?

A. He sent word to me.

Q. He sent word to you?

A. Yes, sir.

Q. After you got the word then what did you do, if anything?

A. I just stayed to the house around there and kept a watch out.

[fol. 216] Q. You stated that you stayed at the house and kept a watch out?

A. Yes, sir.

Q. What were you watching for, T. W.?

A. He told us there was a stray man and to notify him if he come around there.

Q. And while you were watching out did you see anybody that afternoon that you thought was unusual in any respect?

A. Yes, sir.

Q. I'll ask you if you saw the defendant, Isaac Sims, that evening?

A. Yes, sir.

Q. About what time of the evening did you see him?

A. About 2:30.

Q. And where was he when you first saw him?

A. He was at another boy's house—Boy Roberson's house.

Q. And what happened then when the defendant, Isaac Sims, Jr., came there? Tell me what happened then.

A. He just come there and stand up on my front porch, and stand up there was all.

Q. That was Isaac Sims, Jr.?

A. Yes, sir.

Q. Did you look at him at that time?

A. Yes, sir.

Q. Tell the jury what you saw about his condition, if anything, at that time.

A. I looked at him and his clothes was muddy a little bit.

Q. You say his clothes were muddy?

A. Yes, sir.

Q. What part of his clothes was muddy?

A. His knees.

Q. Do you know Arthur?

A. Yes, sir.

[fol. 217] Q. Now, what relation is Arthur Walker to you, if any?

A. He's my brother.

Q. Do you know where he is now?

A. Yes, sir.

Q. Where is he?

A. In the court house.

Q. Was Arthur with you on that occasion?

A. No, sir. He come down there.

Q. All right, Arthur came down where?

A. Down to my house.

Q. Was Arthur there while the defendant was there, Isaac Sims?

A. Yes, sir.

Q. And what did you do or what did Arthur do after Isaac Sims came there and you saw he had mud on his breeches, and so forth? What did you do then?

A. I didn't do nothing but told him to go on and give himself up.

Q. You told who that?

A. Isaac Sims.

Q. Well, when you told him he ought to give himself up what did he say?

A. He didn't open his mouth.

Q. What?

A. He didn't open his mouth.

Q. And then what happened?

A. I left him there and I went and got in my car and went and got Mr. Stokes.

Q. You left him with whom?

A. With my brother, Arthur Lee.

Q. With your brother Arthur?

A. Yes, sir.

Q. And you went and got Mr. Stokes?

[fol. 218] A. Yes, sir.

Q. That was Mr. Noah Stokes?

A. Yes, sir.

Q. And then did Mr. Stokes come there after then?

A. Yes, sir.

Q. And what happened when Mr. Stokes came there?

A. He didn't nothing but just got up off the porch and got in the truck with him.

Q. And when Mr. Stokes came there were there several other people around there?

A. No, sir; no more than the children around there.

Q. Well, were there colored people or white people there with the defendant at that time?

A. Nothing but colored.

Q. Nothing but colored?

A. No, sir.

The Solicitor General: He's with you.

Cross examination.

Q. (By the Defendant's Attorney): Your name is T. W. Walker? Is that right?

A. That's right.

Q. And when Mr. Stokes came over there you were afraid, weren't you?

A. Yes, sir.

Q. As a matter of fact, you were very scared, weren't you?

A. Yes, sir.

Q. Is that right?

A. That's right.

Q. You'd been knowing Miss Roberts (Mrs. Crawford now) a long time, hadn't you?

[fol. 219] A. Yes, sir.

Q. As a matter of fact, you knew her very well, didn't you?

A. Yes, sir.

Q. Is that right?

A. That's right.

Q. Now, have you ever had occasion to walk over to her house from where you live?

A. No, sir.

Q. Have you ever gone to her house?

A. Yes, sir.

Q. Do you know where she lives?

A. Yes, sir.

Q. When is the last time you went over to her house before this incident happened?

A. I couldn't tell you the last time I've been over there.

Q. But you do remember that you've been over there?

A. Yes, sir.

Q. You know exactly where she lives, don't you?

A. Yes, sir.

Q. As a matter of fact, you are very familiar with those woods over there between Highway 23 and Toledo and where Miss Roberts lives?

A. Yes, sir.

Q. You've been out in those woods a lot of times, haven't you?

A. Yes, sir.

Q. You could find your way through those woods at night, couldn't you?

A. Do how?

Q. You wouldn't have any trouble at all, would you?

(No response)

[fol. 220] Q. Now, you said that the first time that you saw Mr. Stokes was about 2 o'clock in the afternoon? Is that right?

A. That's right.

Q. And that was the first time that Mr. Stokes had seen you. Is that right?

A. Yes, sir.

Q. And you knew that something was wrong, didn't you?

A. After he sent the word I knowed something was wrong.

Q. Where had you been all day long?

A. Down here to Folkston.

Q. You'd been down to Folkston?

A. That's right.

Q. When did you come home from Folkston?

A. I got home about one o'clock.

Q. Did anybody see you in Folkston?

A. I imagine just about everybody around here seen me in Folkston.

Q. I asked you, Mr. Walker, did anybody in Folkston see you?

A. Well, somebody down here seen me.

Q. Do you know that person's name?

A. I don't know that I could call all of them's names around here that know me.

Q. But you say you were down here in Folkston? Is that right?

A. Down here in Folkston.

Q. You were driving?

A. That's right.

Q. What were you driving?

A. A 1954 Chrysler.

Q. You were driving a 1954 car? Is that right?

A. That's right.

Q. Was it your car or somebody else's?

[fol. 221] A. It was mine.

Q. Do you still have it?

A. No, I've got a Pontiac now.

Q. And you say that you saw the defendant over there in Toledo and you saw some mud on his knees, didn't you?

A. That's right.

Q. Didn't he tell you he had been shooting dice?

A. That's what he said.

Q. You didn't see any other mud on him any place else except on his knees? Is that right?

A. That's right.

Q. Now, you've been knowing Isaac for sometime, haven't you?

A. That's right.

Q. How long did you say you've been knowing Isaac?

A. About ten years.

Q. And you know Isaac is kind of dumb, don't you?

A. I didn't know that.

Q. You know he can't read or write, don't you?

A. I didn't know that.

Q. You can read and write, can't you?

A. No, sir.

Q. You can't read and write?

A. No, sir.

Q. Now, you can't name anybody who saw you in Folkston on April 13, 1963, can you?

A. No, sir.

The Defendant's Attorney: Thank you.

(Witness excused.)

ARTHUR LEE WALKER was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

[fol. 222] Direct examination.

Q. (By the Solicitor General) Your name is Arthur Lee Walker?

A. Yes, sir.

Q. Arthur Lee, you live where?

A. Toledo, Georgia.

Q. In Toledo?

A. Yes, sir.

Q. Do you know Mr. Noah Stokes?

A. Yes, sir.

Q. Do you know T. W. Walker, who was just in here?

A. Yes, sir.

Q. What relation is he to you, if any?

A. My brother.

Q. Now, Arthur, do you know the defendant, Isaac Sims?

A. Yes, sir.

Q. The defendant here, Isaac Sims—do you know him?

A. Yes, sir.

Q. How long have you been knowing Isaac Sims, Arthur?

A. Well, about ten years.

Q. Do you know Miss Nola Jean Roberts, who was Miss Nola Jean Roberts at the time?

A. Yes, sir.

Q. About how long had you been knowing her?

A. About twelve years.

Q. Do you remember the occasion when Nola Jean was attacked?

A. Yes, sir.

Q. On April 18th, 1963?

A. Yes, sir.

Q. Where were you living at that time? Were you living at Toledo?

A. Yes, sir.

[fol. 223] Q. Did you see Mr. Noah Stokes any time that day?

A. Yes, sir.

Q. Did he talk to you or send you any word?

A. Yes, sir.

Q. About what time of day did he talk to you or send you some word?

A. About one.

Q. About what time?

A. Just about one or one-thirty.

Q. In the day time?

A. That's right.

Q. And after you received the word or talked to him what did you do, Arthur, if anything?

A. Well, I just "sat" around there to my mother's.

Q. Were you looking for anybody or anything?

A. Yes, sir; after he told me.

Q. And did you see the defendant, Isaac Sims, Jr., on that day?

A. I first seen him at Mr. Boy Roberson's house.

Q. Now, where was that in relation to where you lived?

A. It was about as far as from here to up town, or a little further.

Q. About two blocks?

A. I imagine it was about further than that around there to my mama's house.

Q. Now, when you first say him about what time of the day was that?

A. Oh, it was getting on around about 2 or 2:30 or somewhere in there.

Q. Then what happened, if anything?

A. Well, I went there to Boy Roberson's house, and he come--when I went up there I asked him where he come from, and at that time he told me he was coming from St.

George shooting dice. I asked him who he went to St. [fol. 224] George with. He said he went up there with Jake Stewart. I told him no, he ain't went to St. George with Jake Stewart, for Jake Stewart don't have a car; and at that time I asked him what the law was doing looking for him. He asked me what law. I says, "You know what law." And at that time he broke to go in Boy Roberson's house and Boy shoved him out, and at that time he went around the house that way and I went around that way (indicating), and he got around there and I asked him did he really attack that white woman.

Q. You asked him what?

A. Did he attack that white woman.

Q. And what did he say?

A. He said he did.

The Defendant's Attorney: I object to it, your Honor. He has not shown that this was a voluntary statement at all, and your Honor, it would be self-serving.

The Solicitor General: How could it be self-serving? This is a witness who has no interest in the case. I will ask him the preliminary questions, though. I will be glad to do that.

Q. When you asked him the questions at that time had you threatened him at that time or done anything to him?

A. No, sir.

Q. Had anybody promised him anything to make a statement?

A. No, sir.

Q. Was there any fear of you or anybody else there at that time to cause him to make a statement?

A. No, sir; not as I know.

Q. Was anybody doing anything to him at the time?

A. No, sir.

Q. Did anybody tell him he had to make a statement?

A. No, sir.

Q. And you asked him what, now?

[fol. 225] A. I asked him did he attack that white woman, and he said, "Yes." And at that time he took off and took a little trot towards the swamp down there, and I backed up to the window and asked Boy Roberson for his gun, and I called him, and he turned around and come back to me, and he got just about to me and I threwed the gun on him

and told him to go and sit on T. W.'s porch, and at that time I told T. W. to go tell Mr. Stokes to come pick him up—that we got his man around here, and he set on the porch there and he said no more to me and I said no more to him.

Q. How did he leave from where you were?

A. All right.

Q. Who did he leave with?

A. Mr. Stokes.

Q. And did you see the condition of his clothes at that time?

A. No, only his knees was muddy.

Q. And he said he was the person who attacked that girl? Is that right?

A. That's right.

The Solicitor General: He's with you.

Cross examination.

Q. (By the Defendant's Attorney) You are Arthur Walker? Is that right?

A. Yes, sir.

Q. And you are the brother of T. W. Walker?

A. That's right.

Q. Now, how old are you?

A. Twenty-six.

Q. Now, you live over there in Toledo, you and your brother? Is that right?

A. Yes, sir.

[fol 226] Q. Now, what did you do on the morning of April 13th?

A. What was I doing?

Q. Yes.

A. I was down in Folkston.

Q. What were you doing down in Folkston?

A. Just riding around waiting for my mother to get through from work.

Q. You were just riding around?

A. Yes, sir.

Q. Do you know anybody who saw you riding around?

A. Well, I had some more of my brothers with me.

Q. How many brothers do you have?

A. Nine.

Q. Did you have T. W. with you?

A. No, sir.

Q. You don't know where T. W. was, do you?

A. No, sir.

Q. Now, when you claim that you asked the defendant, "Did you attack that white woman?" And you say he said, "Yes", nobody heard that but you? Is that right?

A. No, sir; there was some more heard it, but they ain't here.

Q. Who are they?

A. There was a lot of them heard it.

Q. Now, this is the first time you ever told that anybody else heard that? Is that right?

A. Sir?

Q. I say this is the first time you ever told anybody else that somebody else heard it? Is that right?

A. That's right.

Q. You are pretty familiar with that area over there [fol. 227] between Toledo and the Lonnie Roberts road and the highway, aren't you?

A. That's right.

Q. Because you live in the area? Is that right?

A. That's right.

Q. And you could find your way through that area at night, couldn't you?

A. In the dark?

Q. As a matter of fact, you know all the short cuts and roadways and paths, that lead through there, don't you?

A. So far I do, yes, sir.

Q. Have you ever been hunting out there?

A. Not there.

Q. But you have been out there, haven't you?

A. That's right.

Q. Your brother, T. W., has been out there, too, hasn't he?

A. That's right.

Q. Now, you don't know where T. W. was on that morning, do you?

A. No, sir.

Q. T. W. doesn't know where you were?

A. No, sir.

Q. But you do know that T. W. wasn't in Folkston with you? Is that right?

A. That's right.

Q. And you'd been knowing Miss Nola Jean Roberts a long time, hadn't you?

A. That's right.

Q. As a matter of fact, you had been over to her house, hadn't you?

A. I've been by there?

Q. You've been by there?

A. That's right.

Q. Can you read and write?

A. No, sir.

Q. Now, when Mr. Stokes came over in the quarters there [fol. 228] he didn't ask you where you'd been, did he?

A. No, sir.

Q. You didn't tell him where you'd been, did you?

A. No, sir.

Q. As a matter of fact, you didn't tell him where T. W. was, did you?

A. No, sir.

Q. So, Mr. Stokes didn't know how long you'd been at home, did he?

A. No, sir.

Q. The only mud you say you saw on the defendant's clothes was on his knees? Is that right?

A. That's right.

Q. And he told you he'd been shooting dice?

A. That's right.

The Defendant's Attorney: The witness is with you.

Redirect examination.

Q. (By the Solicitor General) He also told you he attacked that girl, didn't he?

A. Yes, sir.

The Solicitor General: You can come down.

The Defendant's Attorney: Just one more question.

Recross examination.

Q. (By the Defendant's Attorney) You say you don't know where your brother T. W. was, do you?

A. No, sir.

(Witness excused.)

C. V. Gowen was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

[fol. 229] Q. (By the Solicitor General) Would you state your name for the record?

A. C. V. Gowen, Trooper, Georgia State Patrol.

Q. Did you hold that position during all the year 1963?

A. Yes, sir.

Q. And especially on the 13th day of April, 1963?

A. Yes, sir.

Q. Do you remember the occasion when Nola Jean Roberts was raped back on April 13th, 1963?

A. Yes.

Q. Where were you stationed at that time?

A. Waycross, Georgia.

Q. And where was your territory?

A. Well, it included Charlton County.

Q. About what time of the day did you learn about this—that you got the report that Nola Jean Roberts had been raped?

A. It was in the morning time. I'd say from 10 to 11 o'clock.

Q. And did you go to the scene where she was raped?

A. Yes, sir.

Q. Where was that in relation to her house, if you know?

A. Well, I believe her house is at the end of the lane at the end of a dirt road, and it would be east of her residence.

Q. About a half a mile away from the scene?

A. Yes, sir.

Q. And how did you go to the scene? How were you traveling?

A. In a patrol car.

Q. And what did you bring with you to the scene of where Nola Jean Roberts had been raped, if anything?

A. We didn't bring anything ourselves, but just another trooper and myself. Another car brought the dogs—two bloodhounds.

Q. Who had the bloodhounds?

[fol. 230] A. Corporal Griffin.

Q. And what did you do then with the bloodhounds, if anything?

A. Corporal Griffin brought the two bloodhounds and two dog boys, and the two dog boys and myself—

Q. (Interposing) Now, let me ask you who the dog boys were. Is that prisoners?

A. Yes, sir; prisoners that run with the dogs. They're all trained for tracking human beings.

Q. And did he bring those bloodhounds to the scene?

A. Yes, sir.

Q. And did you receive any information at the scene?

A. Well, we found out what was supposed to have happened and where it happened.

Q. What did you do with the dogs?

A. We found tracks.

Q. In relation to the road which way were the tracks running?

A. Well, there were tracks all over the place.

Q. Let me ask you something—

The Defendant's Attorney: (Interposing) Just a minute. Could he complete his answer?

The Solicitor General: Yes.

The Witness: My answer was complete.

Q. (By the Solicitor General) I beg pardon?

A. My answer is complete.

The Defendant's Attorney: I'd like to have his answer completed, your Honor. Did you say there were tracks all over the place?

A. Yes.

Q. (By the Solicitor General) Now, were there any—do you know where Toledo is?

A. Yes, sir.

Q. Did you see any human tracks leading in that direction from the scene?

A. Yes, sir.

Q. Now, in relation to the road, would that be towards the road or away from the road, across the woods?

A. Well, are you referring to the county road—the graded road?

Q. I'm referring to the county road—the dirt road.

A. The track lead north. When they left the scene they went in a northerly direction.

Q. Now, what did you do with the dogs, if anything, in relation to those tracks at the scene leading north?

A. We put the dogs on the track, and they took the trail—a hot trail, and they immediately struck out, and traveled for some distance in a northerly direction, and then veered to the east across Georgia 23, and then parallel with Georgia 23 for a while on the east side, and we trailed the track that far.

Q. And how did those tracks go in relation to Toledo?

A. They were going toward Toledo.

Q. Did you track all the way to Toledo?

A. Not quite all the way.

Q. About how close to Toledo did you track?

A. About a half a mile.

Q. About how many miles did you follow the tracks, if you know?

A. Well, there was a lot of wandering. It could have been ten or twelve miles.

Q. The track was winding around?

A. Yes, winding around. No fixed position. When they left the dirt road they went parallel and ran north, and then headed east, and then headed back north again.

Q. Now, you stated that you went to about a half a mile of Toledo—what caused you to stop?

A. Well, at that time we were contacted by Corporal Griffin, who advised us that the subject had been picked up, [fol. 232] and we stopped the chase.

Q. You were the man with the dog boys doing the tracking?

A. Well, I was with the dog boys, yes.

Q. With the dogs?

A. Yes, sir.

Q. And you say you stopped about a half a mile before you got to Toledo because you were advised that the subject had been picked up?

A. Right.

Q. Did you see the defendant here, Isaac Sims, Jr., at that time or shortly thereafter?

A. Yes.

The Solicitor General: He's with you.

The Defendant's Attorney: I move to strike the witness' testimony, your Honor, on the ground that it is totally irrelevant and it's not connected up.

The Solicitor General: He testified that the dogs got on the trail at the scene, and his testimony was that he followed them within about a half a mile of Toledo, and there's testimony already in that this defendant was picked up at Toledo, and it's a circumstance leading to his arrest.

The Defendant's Attorney: Your Honor, I don't see how a track that led a half a mile from Toledo led to his arrest, when the witness has testified himself that the subject was taken in custody. He didn't even know who the subject was at that time.

The Court: Well, I'm going to let it in.

The Defendant's Attorney: Note my Exception.

The Court: All right.

Cross examination.

Q. (By the Defendant's Attorney) Officer Gowen, you don't know whose tracks these were, do you?
[fol. 233] **A.** No.

Q. As a matter of fact, you don't even now know whose tracks these were, do you?

A. No.

Q. All you know is that the dogs ran tracks and you followed some tracks?

A. We ran human tracks.

Q. Did you make any other investigation to find out who committed the offense?

A. No.

Q. Did you ever take the dogs up to Toledo and take them to T. W. Walker's house?

A. No.

Q. What about Arthur's house?

A. No. We didn't take the dogs to Toledo at all.

Q. So you just don't know whose tracks these were?

A. No, I don't know whose they were.

Q. They could have been T. W. Walker's tracks or could have been Arthur Walker's tracks, or they could have been anybody's tracks? Is that right?

A. I don't know whose they were.

Q. Is that right? They could have been anybody's tracks?

A. I don't know whose they were.

(Witness excused.)

George Sims was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Solicitor General) Would you state your name for the record?

A. George Sims.

Q. What is your position, Mr. Sims?

[fol. 234] A. I'm Sergeant of the State Patrol at Waycross.

Q. Is Charlton County in your district?

A. Yes, sir.

Q. Sergeant, do you remember the occasion back on the 13th day of April, 1963, when Nola Jean Roberts was raped?

A. Yes, sir.

Q. Do you know the defendant, Isaac Sims, sitting over here, Sergeant?

A. Yes, sir.

Q. Did you see him on that date?

A. Yes, sir; I did.

Q. Where did you first see him?

A. South on Georgia 23 towards St. George.

Q. And where was he or who was he with at that time?

A. He was in the car with Mr. Stokes.

Q. Is that Noah Stokes?

A. Yes, sir.

Q. What happened when you saw him?

A. Trooper Peacock and I took him into our custody.

Q. When you say Trooper Peacock and yourself—what rank is Trooper Peacock?

A. Trooper.

Q. Were you the officer in charge at that time?

A. Yes, sir.

Q. And he was turned over to you then?

A. Yes, sir.

Q. Now, when Isaac Sims was turned over to you where was that where he was turned over to you?

A. South of Folkston near Toledo.

Q. And about what time of day was that, Mr. Sims?

[fol. 235] A. Around 3 o'clock.

Q. And when Isaac Sims, Jr., was turned over to you what did you do with him, if anything?

A. We brought him to Dr. Jackson's office.

Q. And then where did you take him, if anywhere?

A. Then we took him to Wayercross.

Q. What did you do with him in Wayercross?

A. We took him to the Ware County jail.

The Solicitor General: He's with you.

Cross examination.

Q. (By the Defendant's Attorney) Why did you take him to Dr. Jackson's office?

A. That was the orders—Instructions from Sheriff Sikes.

Q. To take him to Dr. Jackson's office?

A. Yes.

Q. It doesn't matter who is delivered to you, do you take that person to Dr. Jackson's office? Is that right?

A. I took that boy to Dr. Jackson's office.

Q. My question is that any subject delivered to you on this day you would take them to Dr. Jackson's office?

A. Anybody that the sheriff instructed me to take I would take.

Q. If someone else had been arrested they would have been taken to Dr. Jackson's office?

A. No, I didn't say that.

Q. You didn't make any other investigation, did you?

A. No.

Q. So, you don't know whether or not someone else did commit this offense or not, do you?

A. I don't know.

Q. You made no other investigation, did you?

[fol. 236] A. No.

Q. Did you take any foot prints at the scene?

A. No.

Q. Did you take any finger prints on a car at this scene?

A. I didn't.

Q. By the way, do you know what happened to that car that the negro man was supposed to have been driving?

A. I do not. I never saw the car.

Q. But you made no investigation to ascertain finger prints or foot prints, did you?

A. No.

The Defendant's Attorney: That is all.

Redirect examination.

Q. (By the Solicitor General) As a matter of fact, you don't take any finger prints in your position in any case, do you?

A. I wasn't the investigating officer.

Q. You didn't make any type of investigation of that case?

A. It wasn't my job to make an investigation.

The Solicitor General: You can come down.

Recross examination.

Q. (By the Defendant's Attorney) Excuse me, Sergeant Sims. Who was the officer stationed at the State Patrol who was in charge of making investigations?

A. Investigator Cornelius and Investigator Dixon. They are the investigating officers.

Q. Now, do you know of your own personal knowledge, Sergeant Sims, whether or not they made any such investigation?

A. Not from personal knowledge.

(Witness excused.)

ROBERT C. ADKINS was thereupon called as a witness in [fol. 237] behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Solicitor General) Will you state your name for the record?

A. Robert C. Adkins.

Q. What business are you in or what position do you hold, Mr. Adkins?

A. I operate the funeral home and ambulance service here.

Q. Is that here in Folkston, Georgia?

A. That's right.

Q. Do you know Nola Jean Roberts?

A. I do.

Q. Do you remember the occasion back on the 13th day of April, 1968, when she was molested?

A. I do.

Q. Did you receive a call on that date? Don't tell what was said, but did you receive a call?

A. I did.

Q. About what time of day did you receive that call?

A. A little before noon time, as I recall.

Q. In response to that call what did you do, if anything?

A. I took the ambulance to Nola Jean Roberts' home.

Q. Now, where is that home? Is that near St. George?

A. Yes, that's correct.

Q. And when you got to her home where she lived what did you do at that time? Did you see Nola Jean?

A. I did.

Q. Where was she?

A. Laying on the couch in her living room.

Q. And did you observe her at that time?

[fol. 238] A. I did.

Q. State to the jury what you saw when you observed her?

A. She was dirty, covered with sand; she was bloody on her face, and apparently swollen around the eyes, and her face—the sand on her face was tear streaked.

Q. And what did you do, if anything, after you went there and observed her lying there in that condition?

A. Put her on the stretcher and into the ambulance.

Q. Then what did you do with her?

A. Brought her into the McCoy-Jackson Hospital here in Folkston.

Q. Did you have a chance to observe Nola Jean on her trip to the hospital?

A. Yes, I did. I watched her frequently.

Q. Would you tell the jury what you observed on this trip to the hospital?

A. Nola Jean, of course, was crying, and her mother was riding in the back of the ambulance with her, and her mother was quite distressed, and she was crying, and her mother spent most of the trip into the hospital with her arms folded over Nola Jean and her head laying over the stretcher, leaning over Nola Jean, and they were both crying terribly.

Q. And where did you carry them?

A. To the McCoy-Jackson Hospital.

Q. About what time of the day did you get them there? Approximately what time was it?

A. 12:15 or 12:30. Somewhere along there, I think.

Q. What portion of the hospital did you take her in?

A. To the emergency room.

Q. Did she see a doctor at that time?

A. Yes. Dr. Jackson was there.

[fol. 239] The Solicitor General: He's with you.

Cross examination.

Q. (By the Defendant's Attorney) You don't know what happened out there on the road at all, do you?

A. Not of my own knowledge. Only what I was told.

Q. And your testimony is that you transported Mrs. Crawford, now, you know Miss Roberts is married?

A. Yes.

Q. And you transported Mrs. Crawford to Dr. Jackson's office—to his hospital? Is that right?

A. That's correct.

The Defendant's Attorney: That's all.

(Witness excused.)

DR. JOSEPH M. JACKSON was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Solicitor General) Would you state your name for the record?

A. Joseph M. Jackson.

Q. What's your profession?

A. Medical doctor.

Q. Where did you go to school, Doctor?

A. Medical College of Georgia in Augusta.

Q. Did you graduate, Doctor?

A. Yes.

Q. When did you graduate?

A. 1943.

Q. And what have you been doing since that time?

A. Well, interned for a year at the University Hospital in Augusta, and served thirty months active duty in the U. S. Navy.

Q. Now, what did you do when you served on active duty in the Navy, Doctor?

[fol. 240] A. I was ship's doctor aboard a ship at sea.

Q. Is that a medical doctor?

A. Yes.

Q. And since that time what have you been doing?

A. I worked a year at the Atlantic Coast Line Hospital in Waycross, Georgia.

Q. As a doctor?

A. As a doctor. And I've been practicing in Folkston since 1947.

Q. Is that in the general practice of medicine, Doctor?

A. Yes.

Q. Now, Doctor, do you know Nola Jean Roberts?

A. Yes.

Q. Who is now Nola Jean Roberts Crawford?

A. Yes.

Q. Doctor, do you remember the occasion when she was attacked on the 13th day of April, '63?

A. Yes, I do.

Q. Doctor, did you see her on that occasion?

A. Yes, I did.

Q. About what time of day or night did you see her, Doctor?

A. It was shortly after noon, April the 13th.

Q. Shortly after noon—you mean after dinner—shortly after 12 o'clock?

A. It was around 12:15 or 20.

Q. Where did you see her on that occasion, Doctor?

A. At the emergency room of the hospital—McCoy-Jackson Hospital here in Folkston.

Q. Now, Doctor, had you had an occasion to examine Nola Jean Roberts just prior to the 13th day of April, '63?

A. Yes, I had seen her on two or three occasions in two or three weeks prior to this occasion.

[fol. 241] Q. Doctor, had you had occasion to, just prior to this date, the 13th day of April, 1963, to examine her private parts?

The Defendant's Attorney: I object to that, your Honor. It's highly irrelevant and immaterial as to what her condition was prior to April 13th, 1963.

The Solicitor General: We want to show what her condition was before and after.

Q. I will rephrase it and ask you what her condition was just prior to this date, the 13th?

The Defendant's Attorney: I object to that, too, your Honor. It is a leading question, first of all, and I object to the form of the question as being irrelevant and immaterial.

The Solicitor General: Certainly, to ask what a person's condition is is not a leading question, because it doesn't suggest any answer. I ask him if he knew her condition from having examined her.

The Court: That wouldn't be a leading question.

Q. (By the Solicitor General) Did you examine her, Doctor, just prior to April 13, '63?

A. Yes.

Q. What was her physical condition at that time?

A. Well, it was a normal condition that you would normally find in a virgin female.

Q. And, Doctor, you say that she was a virgin at that time?

A. Yes, when I examined her.

Q. Now, Doctor, when you saw her on the 13th day of April at the hospital in the emergency room shortly after 12 o'clock did you examine her at that time?

A. I did.

Q. Would you tell this jury what her condition was at that time, Doctor? Did you examine her face?

[fol. 242] A. When I saw her she was lying on the emergency room table, very emotionally upset and almost in a state of shock from the experience that she said she had just gone through. Her clothes were dirty that she had on; her face was dirty; there was mud about her legs; and her face had blood stains, had bruise marks, and there was clotted blood about, particularly, her nose, and the eyes were bloodshot. There were marks on her neck, chest, and breast, and there were marks on her lower abdomen, and her female parts showed evidence of fresh trauma. There was a bleeding area and a small torn area in the lower part.

Q. Now, Doctor, I believe you did examine her private parts at that time? Is that right?

A. Yes, I just made a statement as to that.

Q. And in laymen's language did you find there had been any penetration of that part?

A. There was a penetration.

Q. And inside the vagina what did you find—inside the private parts?

A. It was just bruised and was beginning to show some swelling and trauma.

Q. Doctor, did you make any pictures of Nola Jean at that time—about that time?

A. The following morning I made pictures of her eyes and face, neck and chest.

Q. Doctor, how long did she stay in the hospital as a result of this attack on her—being raped?

The Defendant's Attorney: I object to that, your Honor.

The Court: All right, on what ground?

The Defendant's Attorney: I object to the form of the question. It's leading. And I object, secondly, that there [fol. 243] is no foundation for her staying in the hospital because she had been raped.

The Solicitor General: All right, I'll withdraw the question and rephrase it.

Q. Doctor, you examined her and you just explained this condition to the jury? Is that correct?

A. Yes.

Q. How long did she stay in the hospital as a result of these injuries that you just referred to—the injuries to her face and neck and to her body?

A. She stayed in the hospital approximately six days, and the following day—there was increasing severity for the next three or four days. She complained of severe pain in her left chest, which was a direct result of trauma sustained April 13th.

Q. And what about her neck, Doctor? Did you examine her neck?

A. There were bloodshot areas, would be a simpler term for that, on her neck.

Q. Would you point on your neck the blood shot areas on her neck, Doctor?

A. Well, I had occasion to make some pictures of that area, and I have those slides, which would show that.

Q. Doctor, did you make the pictures yourself?

A. I made them myself.

Q. Doctor, did you make a picture of her face?

A. I did.

Q. And her neck?

A. I did.

Q. And other portions of her body?

A. I have pictures of her face and neck and upper chest area.

Q. Now, Doctor, those pictures you have, are they true [fol. 244] and correct representations of her condition at that time?

A. Of the trauma to this area it is.

Q. Do you have those pictures available?

A. I do.

Q. Would you let me see them, Doctor?

A. They are slides (producing slides).

The Solicitor General: I would ask the Court Reporter if he would mark these as Exhibit 1 for the State of Georgia for the purpose of identification.

(The container holding the slides referred to was thereupon marked for identification "State's Exhibit 1").

Q. Now, Doctor, I believe you've already testified that those slides present a true and correct representation of her at that time?

A. Yes.

Q. When did you say they were taken, Doctor?

A. April 14th—the morning of April 14th.

Q. Of what year?

A. 1963.

Q. And, Doctor, do you have any means that you can show these pictures to the jury?

A. I have a projector and a screen which can be set up.

Q. Can you do it at this time, Doctor?

A. Yes.

The Defendant's Attorney: Of course, your Honor, we're going to object to showing the slides, and I'd like to approach the bench.

(A conference was thereupon held off the record.)

The Court: Let the jury go to the jury room.

(The jury thereupon retired from the court room.)

The Defendant's Attorney: Your Honor, we would like [fol. 245] to look at them before they are shown to the jury. There may be some objections.

(The witness thereupon projected the slides on a screen set up in the court room.)

The Court: We are going to have to have some order to them.

The Solicitor General: What about letting the Court Reporter mark them.

The Court: Let him mark them.

The Solicitor General: And then you can give the numbers.

(The slides in question were thereupon marked for identification, "1-A, 1-B, 1-C, 1-D," and "1-E.")

The Court: Now, do you object?

The Defendant's Attorney: Yes, sir; I object to these photographs. First of all, the photographs themselves do not accurately identify the person whom they purport to be. The only way that the identify of the person whose

photographs they purport to be can be established is by a witness who has a proprietary interest in the case, since he is the doctor who is employed by the county for medical purposes; and, secondly, that he is the doctor who has been employed professionally by Mrs. Crawford in the case, and we say, your Honor, that the pictures, one, do not adequately establish whom they purport to be; two, that they are offered by a person who has proprietary interest and financial interest in the case; and, thirdly, your Honor, that they are *highway* prejudicial and could do no more than inflame the passions of the jury while being themselves unreliable to show that this is Nola Jean Roberts.

Another observation I'd like to make is that this evidence [fol. 246] could have been produced at the prior trial, and this witness, if his testimony is to be believed, had these pictures, and he didn't produce these pictures, and he has brought them to court here tonight, a year and five months later after the prior conviction. We take the position, your Honor, that the only way justice can be done in this case is for the jury to be prevented from becoming impassioned and inflamed by keeping these pictures out, and I move that the pictures be stricken and not allowed in evidence.

The Solicitor General: Your Honor, in reply to that I'd like to say that these are pictures that the jurors themselves can see for themselves, and they can be the judges of who they are pictures of. Dr. Jackson is not an interested party, and he testified that this is a picture of Nola Jean Roberts, and that he made them and they are true and correct representations; and I might remind counsel that the State decides what evidence to put up or not to put up, and neither Dr. Jackson nor any other witness decides that, and counsel knows that, and he knows it's an improper remark to infer or insinuate that somebody has withheld information, which is not true.

The Defendant's Attorney: I didn't insinuate that anybody had withheld information. I stated what's a matter of fact, your Honor. The witness has just produced these pictures that are in court today.

The Court: I overrule the objections. Bring the jury back.

(The jury thereupon returned to the court room.)

Q. (By the Solicitor General) Dr. Jackson, in reference to Exhibit 1 for the State, which has now been identified as "1-A, 1-B, 1-C, and 1-D), and so forth, I believe you've already testified that you made those pictures yourself and that they are true and correct representations of Nola Jean Roberts at the time that you made them?

[fol. 247] A. Yes.

Q. Now, Doctor, would you show to this jury the pictures that you made? Start with the first exhibit and explain it to the jury. Let me ask you some questions about it. Doctor, I will ask you who is that a picture of?

A. (Exhibiting a picture on the screen) Nola Jean Roberts Crawford.

Q. Now, what exhibit is that?

A. It's Exhibit "1-A."

Q. And is that a true and correct representation of Nola Jean Roberts at the time you took the picture?

A. It is, on April 14th.

Q. Doctor, would you move up to the screen and point out to the jury, and talk loud enough they can hear you?

A. You can see the blood in the eyes, both sides, which is the direct result of trauma, and small bloodshot areas in the skin, and the nose here, and you see there is a small bloodshot area involved in that also.

Q. Now, Doctor, did you make another picture?

A. Yes.

Q. Do you have a picture marked "Exhibit 1-B?"

A. This is Exhibit 1-B.

Q. Doctor, I will ask you who that is a picture of.

A. That's a picture of Nola Jean Roberts Crawford.

Q. Did you take that picture yourself?

A. I did.

Q. Are all these true and correct representations of her at the time?

A. They are.

Q. Now, what portion of her body is that a picture of, Doctor?

[fol. 248] A. This is her throat and upper chest area. You can see the bloodshot areas involved in the neck and chest. All over the entire area.

Q. Doctor, did you take another picture of Nola Jean at that time?

A. I did. This is Exhibit 1-C, and that, as you can see, is another view of the neck.

Q. Is that another view of Nola Jean Roberts?

A. Yes. Nola Jean Roberts Crawford.

Q. Would you go and point out on that picture the sign that you have reference to?

A. They are multiple areas—all these little spots (indicating).

Q. Now, for the record, Doctor, what portion of the neck is that?

A. Well, it's the neck right up to the—to just below the area of the chin, where the neck comes onto the chest right here, and the area on the chest is here.

Q. Doctor, did you take another picture of her at that time?

A. I did.

Q. What exhibit number is that?

A. 1-D.

Q. Would you show that to the jury?

A. That is another picture showing the bottom of her nose here, and, of course, the eyes again, and you can see the extent of the hemorrhage into the eye.

Q. For the benefit of getting it in the record, Doctor, what is in the eyes?

A. Well, you have the pupil, the center of the eye, and the cornea, and in this area here normally it's white.

Q. What color is it now?

A. Well, you can see a little white, but mostly red.

Q. Is that what you call bloodshot?

A. That's bloodshot.

[fol. 249] Q. Is that in both eyes?

A. Both eyes.

Q. Doctor, did you take another picture?

A. I did.

Q. Now, what exhibit number is that, Doctor?

A. This is Exhibit 1-E.

Q. Would you show that to the jury?

A. And I think that anybody can see that that is—

The Defendant's Attorney: (Interposing) I object to that, your Honor.

Q. (By the Solicitor General) Doctor, who is that a picture of?

A. Nola Jean Roberts.

The Defendant's Attorney: Your Honor, I object to the witness' characterization that anybody would know who that is. That is not responsive.

The Court: All right, jut ask the Doctor who it is.

The Solicitor General: I've already asked him.

Q. Who is that the picture of?

A. Nola Jean Roberts Crawford.

The Court: All right.

Q. (By the Solicitor General) And that is another picture that I believe you took yourself?

A. I took it on April 14th.

Q. And is that a true and correct representation?

A. A true and correct representation of her on the morning of April 14, 1963.

Q. Did you take any others, Doctor?

A. That's the extent of it.

The Solicitor General: That's all. Thank you, Doctor. He's with you.

Cross examination.

[fol. 250] Q. (By the Defendant's Attorney) Doctor, those pictures you've just shown are slides you took yourself? Is that right?

A. Correct.

Q. I didn't quite hear you.

A. Correct.

Q. And what kind of camera did you use to take those slides?

A. I used a camera that I have at the hospital for making slides—pictures—that we use for making pictures of various types of tissues that we wish to make pictures of.

Q. What type camera is that? What's the make of the camera?

A. I don't know the make of the camera.

Q. Do you use it frequently?

A. Fairly frequently.

Q. How frequently do you use it?

A. When the occasion arises that I want to use it.

Q. How frequently do the occasions arise?

A. There's no frequency. If I have a case I use it. If I don't have a case I have it on hand.

Q. Now, Doctor, how frequently do you have occasion that you want to use the camera?

A. Whenever the occasion arises. It might be one month and it might be four months.

Q. How many times have you used it during the last twelve months, Doctor?

A. I've probably used it six or eight times.

Q. Always at the hospital?

A. Always at the hospital except when I use it at other places.

Q. Does anyone else use the camera?

A. Not to my knowledge.

Q. You don't know who made those cameras?

[fol. 251] A. I don't know the make of it.

Q. Did you buy it yourself?

A. I bought it and paid for it.

Q. Now, who made the slides, Doctor?

A. We sent them to the laboratory.

Q. And where is the laboratory?

A. Waycross.

Q. Do you know the name of the company?

A. I don't know the name of the company.

Q. Is it an American made camera?

A. I presume that it is. I don't know the name of, so how would I know where it was made?

Q. You don't know whether it was a foreign made camera, do you?

A. I've just answered that question.

Q. Answer the question, Doctor.

A. I've answered it.

The Solicitor General: I want to object to that. The witness is entitled to respect. He's asked him a question and he's answered it, and there's no use for him trying to badger the doctor and ask him the same questions over and over. He answered the question and told him he didn't know, and he comes back and asks the same question over and over, and I object to it.

The Defendant's Attorney: Your Honor, I think that's

most unfair of the Solicitor. I'm not badgering any witness. I wouldn't dare badger the witness,

The Solicitor General: No, he's not badgering him. He's just trying to, and I'm objecting to it.

The Court: All right, just ask the witness the questions and proceed with the examination.

Q. (By the Defendant's Attorney) Doctor, is it a foreign made camera?

[fol. 252] The Solicitor General: Your Honor, I want to object to it again. He just told him he didn't know what the name was and didn't know what make it was. He's answered that question over and over.

The Witness: I bought it from a company in New York. I don't know what the name of it is. I do not know where it was made.

The Solicitor General: And the question couldn't possibly be material or have any bearing on the case.

Q. (By the Defendant's Attorney) Doctor, did the camera have various settings and speeds?

A. It is automatic for various speeds. It's designed for this type work.

Q. And when did you first inform the Solicitor that you had these slides?

A. I told him that we had slides back when the case was discussed, back at the time following the incident. I don't remember the date.

Q. And this is the first time you've ever produced those slides? Is that right?

A. The first time he's asked me.

Q. This is the first time that anyone other than you has seen the slides? Is that correct?

A. I guess that—I couldn't make a statement like that. Somebody developed them.

Q. Other than you and the developer no one else has seen those slides so far as you know?

A. Not unless someone at the hospital might have seen them.

Q. Did anyone see you take those pictures?

A. They did.

[fol. 253] Q. Who did?

A. Nola Jean Roberts.

Q. Anyone else?

A. I believe that there was a nurse present at the time. I don't know which nurse it was, but there was a nurse present

Q. But you are not sure of her name? Is that right?

A. I don't remember which nurse it was.

Q. Now, you stated those pictures show some evidence of trauma—this trauma could have resulted from an automobile accident, couldn't it?

A. Any blow could cause it.

Q. By almost any type of injury? Is that right?

A. Not any type. Some types.

Q. Now, you have seen persons who had blood shot eyes because of an accident, haven't you?

A. I have.

Q. As a matter of fact, almost any blow on the nose caused by any collision will cause bloodshot eyes? Is that right?

A. Not necessarily.

Q. But it would, wouldn't it, or could?

A. I wouldn't say that a blow on the nose you'd probably get trauma involving the eyes also.

Q. You usually do, don't you?

A. Usually what?

Q. Usually get some type of trauma involving the eyes when you get a blow on the nose?

A. Unless the eyes themselves. You get trauma involving the eye lids, but, as far as the eyes themselves, a blow on the nose doesn't necessarily mean that you will get trauma in the conjunctiva of the eye. You usually will get some swelling of the lids or some blood in the tissue—the lower eye lid tissues.

[fol. 254] Q. But you may get some redness of the eyes? Is that right?

A. If you get trauma enough involved in that area you might. I don't think you could take the tip of the nose and get a bloodshot eye.

Q. Now, you didn't make any pictures of Mrs. Crawford's private part, did you.

A. No, I made no pictures of that.

Q. As a matter of fact, you made no pictures of her lower extremities at all, did you?

A. I don't have any pictures of her lower extremities.

Q. And I'm asking you, you didn't make any pictures, did you?

A. I don't have any pictures.

The Defendant's Attorney: I don't think the answer is responsive, your Honor. I am asking him did he make any pictures.

The Court: He can answer it.

The Witness: I don't have any picture. I wasn't able to make the type of pictures that I wanted.

Q. (By the Defendant's Attorney) What pictures did you want?

A. I wanted a picture that would show the inner area there, and I wasn't able to put the camera up to get it.

Q. Now, I believe you testified that her lower abdomen had marked trauma—will you indicate where the lower abdomen is?

(The witness indicates.)

Q. Right in here?

A. Right here.

Q. Now, you could take a picture of that area, couldn't you?

A. I could have.

Q. Now, when you were examining Mrs. Crawford you found no sperm, did you?

A. No sperm.

[fol. 255] Q. In fact, you found no evidence of the male climax, did you?

A. I found—If I couldn't find any sperm there wouldn't be any evidence of the climax.

Q. As a matter of fact, all that you found was that the hymen had been torn and there was a bloodshot area of the vagina? Is that right?

A. Well, there was evidence of penetration into the vagina.

Q. Now, you don't know what caused the penetration, do you?

A. I certainly don't.

Q. It could have been caused by any object capable of penetrating?

A. Any object that would have penetrated.

Q. A pencil?

A. No, it wouldn't be a pencil.

Q. A hammer?

A. I don't think it would be a hammer.

Q. Or a tree limb?

(No response.)

Q. I withdraw the question. Now, the defendant was brought to the hospital? Is that correct?

A. He was brought to the office.

Q. Is that a part of the hospital?

A. No, it's not.

Q. Is it adjacent to the hospital?

A. No, it's not.

Q. How close is it to the hospital?

A. Across the street.

Q. Directly opposite the hospital?

A. Almost opposite.

Q. Who was present at the office?

A. I just don't know who was present.

[fol. 256] Q. But you do state that you were there?

A. I was there.

Q. Were the police officers and the troopers there who brought the defendant in?

A. There were some there.

Q. I asked you were the ones who brought the defendant in present?

A. I presume they are the ones that brought him.

Q. Were there any others present?

A. I don't remember seeing any others.

Q. You weren't alone with the defendant, were you?

A. No. I wasn't.

Q. Did you cause his clothes to be removed?

A. No, I didn't cause his clothes to be removed.

Q. Pardon, sir?

A. No, I did not.

Q. Were his clothes removed?

A. They were.

Q. Did you assist in removing them?

A. I think I assisted him slightly.

Q. When you say that you assisted him slightly do you mean that you yanked his clothes off?

A. No, I don't mean that.

Q. Well, precisely what do you mean, sir?

A. I mean what slightly means.

Q. Well, I'm confused.

A. I think you are.

Q. He didn't voluntarily take off his clothes, did he?

A. I'm sure he did. He was taking them off and we just sort of assisted him.

Q. When you say you sort of assisted him you pulled his [fol. 257] clothes off? Is that right?

A. No, we didn't pull his clothes off. Did you ever help anyone take their clothes off?

Q. Well, let me ask you this: When the defendant left your office he wasn't wearing the same pants that he had on when he came in, was he?

A. No.

Q. As a matter of fact, you gave him a pair of white pants, didn't you?

A. I sure did.

Q. Were his other pants torn?

A. I don't know whether they were torn or not.

Q. But you do know that he could not wear the pants that he had on when he left your office, could he?

A. He certainly could.

Q. Well, why did you give him additional pants?

A. Because I didn't want him going out without any.

Q. Couldn't he have worn his own pants?

A. If the officers had wanted him to wear them.

Q. You say if the officers had wanted him to wear the pants?

A. That's right.

Q. What about you?

A. I didn't care what he wore.

Q. Now, while the defendant was in your office he was knocked down, wasn't he?

A. I don't know whether he was knocked down or fell down.

Q. But you do know that the defendant had to be treated by you?

A. He was not treated by me.

Q. You didn't treat him?

[fol. 258] A. I did not.

Q. You deny that you sutured him?

A. I deny that I sutured him.

Q. You deny that he required some treatment?

A. He didn't ask for it.

Q. I'm asking you now.

A. He had a place over his eye that required some treatment.

Q. The State Patrolman didn't put that place over his eye, did he?

A. I don't know who put it there.

Q. He didn't have it over his eye when he came into your office, did he?

A. I didn't see him till after he got in.

Q. And when you first saw him in your office he didn't have it?

A. I couldn't see it. He was sort of slumped over, sort of falling around, like. Most anything could have happened to him.

Q. Well, the officers weren't beating him were they?

A. You'll have to ask the officers.

Q. I'm asking you, Dr. Jackson. I'm asking you whether or not the officers were beating the defendant.

A. I will say that I wasn't there all the time.

Q. I'm asking you about the time you were there.

A. No, he didn't get any beating.

Q. What about when you were there?

A. You just asked that. I told you no. I couldn't tell you when I wasn't there. Now, about that question of me knocking him down—what was I to knock him down with? You didn't think I would hit him with my fist and knock him down, do you?

Q. What did you use?

A. What do you mean what did I use?

Q. To knock him down.

A. I didn't knock him down.

[fol. 259] Q. Did you find him down on the floor?

A. He sort of fell in the floor.

Q. He just sort of fell? Where were you standing at the time he sort of fell?

A. I was standing on my feet.

Q. Were you standing near him?

A. Fairly close.

Q. Were you standing as close as I am to you, or closer?

A. Probably a little closer.

Q. Where you could touch him?

A. I think he could touch me.

Q. And you could touch him? Right?

A. Yes.

Q. And that's when he sort of fell down? Is that right?

A. He was already down. He was not standing up when I entered the office where he was.

Q. Now, when you came in and he was down is that when you kicked him?

A. You better ask him if I kicked him first.

The Solicitor General: Now, your Honor, he's asking an improper question. There's no evidence that he's ever been kicked by anybody, and he's asking a question about was he down when he kicked him. It's an improper question, and I object to it, and counsel knows better than to ask that type question.

The defendant's Attorney: Your Honor, I think the law gives me a right to a thorough and sifting cross examination of this witness. I'm asking the questions for the purpose of finding out whether or not he kicked him. Nobody knows it any better than he does.

[fol. 260] The Witness: You didn't ask me if I kicked him?

The Solicitor: I'd like to object further to his getting up in the doctor's face and raising his voice and asking him questions. I know the doctor is not hard of hearing, and there's no need to get up in his face to ask him questions.

The Witness: And he doesn't need to get close up.

The Court: Just go ahead.

The Defendant's Attorney: I didn't mean to insult the doctor by getting close.

Q. Now, the defendant was kicked? Isn't that right?

A. I don't know that he was.

Q. You deny kicking him?

A. I deny kicking him.

Q. Now, what was the purpose of taking the defendant's pants off?

A. We were checking his pants to see the presence of any menstrual stains that Nola Jean Roberts had, because she was nearing the end of her menstrual period at the time.

Q. She testified she had completed her period.

A. I can't help what she testified. There were blood stains there, and she had had a kotex pad on, and there was blood stain on her.

Q. You don't know what caused that blood stain on her, do you?

A. I know that there was blood and there was blood serum stain like you get from the latter part of the menstrual period.

Q. So your purpose in taking off the defendant's pants was to examine him?

A. I didn't take off his pants, I told you.

Q. Well, somebody took off his pants.

A. Well, that's all right. I was there when his clothes [fol. 261] were being taken off.

Q. Now, who was taking off his clothes?

A. He was taking them off.

Q. And you assisted him as you testified? Is that right?

A. A little help, yes.

Q. What did the little help consist of, Dr. Jackson?

A. Just like if I were to tell you to sit down and pull off your shoe, and take it and pull it off, or pull up your leg and pull your pants off.

Q. You mean you took his pants by force and pulled them off?

A. I didn't say what I did. You said what did I mean by a little help, and I said that would be a little help, and it consisted of something of that nature. Exactly what I did I'm not saying because I'm not positive of the minute details. I can't tell you little simple details.

Q. But is that the way you could have taken his pants off?

A. I could have cut them off, but I didn't.

Q. After you took the defendant's pants off what did you do?

A. I didn't take his pants off, so I didn't do anything.

Q. Well, after his pants were taken off what did you do?

A. I checked them.

Q. Checked what, sir?

A. Pants.

Q. Were police officers present?

A. There were some troopers present.

Q. What became of those pants, Dr. Jackson?

A. I don't know.

Q. Did you give them back to the troopers?

A. I just looked at them. I laid them down. I don't know who got them.

[fol. 262] Q. Do you know where they are now?

A. I sure don't

Q. Did you take off his other pants also?

A. Took off his shorts.

Q. That's the same as the underpants? Is that right?

A. Yes.

Q. Do you know what disposition was made of his underpants?

A. No.

Q. How long was the defendant in your office on April 13, 1963?

A. Fifteen or twenty minutes.

Q. Do you know where he was taken after he left your office?

A. He was taken over to the hospital and the place was treated I told you about.

Q. He was taken over to the hospital across from your office? Is that right?

A. Yes.

Q. Is that your hospital?

A. It is.

Q. And he was treated?

A. He was treated at the hospital.

Q. For what was he treated, sir?

A. The place over his eye.

Q. And what treatment did he receive?

A. There was a little small place there and there were, I think, four stitches in it.

Q. You put those stitches in?

A. I did not.

Q. Who did?

A. The doctor who was on duty at the hospital.

Q. Who was that doctor?

[fol. 263] A. Dr. Aztui.

The Defendant's Attorney: Thank you, Doctor.

Redirect examination.

Q. (By the Solicitor General) Doctor, I'll ask you one question: I believe you testified that when you examined her on the 13th day of April, on this occasion that she was at the end of her monthly period?

A. Yes.

Q. And blood came out?

A. Blood stained material.

Q. And if there had been any sperm, the blood would have brought it out, wouldn't it?

A. Well, it's possible. According to how much was there.
The Solicitor General: You can come down.

Recross examination.

Q. (By the Defendant's Attorney) Usually, Doctor, this afterflow, which is similar to what a woman experiences after birth, is not extremely heavy at the end of her menstrual period? Is that correct?

A. Not unusually heavy near the end. It's just a small flow, but it's more thin and it flows a lot freer than when there's a lot of blood there.

Q. Doctor, scientifically speaking, the weight of this menstrual flow—the contents—is less than the weight of the male sperm, isn't it?

A. I've never weighed any.

(Witnessed excused.)

DUDLEY JONES was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

[fol. 264] Q. (By the Solicitor General) State your name for the record.

A. Dudley Jones.

Q. What position do you hold, if any, Mr. Jones?

A. Deputy Sheriff, Ware County.

Q. Mr. Jones, did you hold that position on the 13th day of April, 1963?

A. I did.

Q. Mr. Jones, were you a deputy sheriff prior to serving in Waycross?

A. I was.

Q. What county were you a deputy sheriff in?

A. Charlton County.

Q. Mr. Jones, do you know the defendant, Isaac Sims, Jr.?

A. I do.

Q. Do you see him sitting in the court room?

A. I do.

Q. Will you point at him, please?

(The witness points.)

The Solicitor General: Let the record show that he's pointing at the defendant.

Q. How long have you been knowing Isaac Sims, Jr.?

A. Oh, twelve or thirteen or fourteen years, I guess.

Q. Now, Mr. Jones, did you see Isaac Sims, Jr., on the 13th day of April, 1963?

A. I did.

Q. About what time of the day or night did you see him?

A. Around 6:30 in the afternoon.

Q. Where did you see him?

A. In the Ware County jail in Waycross.

Q. When you saw this defendant, Isaac Sims, Jr., did you say anything to him or did he say anything to you?

A. He spoke to me.

[fol. 265] Q. Where was he at the time?

A. He was in a cell on the third floor of the Ware County jail in Waycross.

Q. What did he say to you, if anything?

A. He said, "Hey, Mr. Dudley. Are you working up here?" I said, "Yes."

Q. Now, where was he at that time?

A. He was in a cell on the third floor of the Ware County jail, Waycross.

Q. And what did he say then, if anything? What did you say to him and what did he say to you?

A. I asked him what he was doing up there, and he proceeded to tell me.

Q. Now, before he proceeded to tell you did you promise him anything to tell you anything?

A. I did not.

Q. Did you threaten him any way?

A. I did not.

Q. Was anybody else present?

A. No one.

Q. Was he offered any hope of reward?

A. He was not.

Q. Was he induced by you in any manner to make a statement?

A. No.

Q. Was he in any fear of injury any way?

A. No.

Q. Was the statement made voluntarily?

A. It was.

Q. What did he tell you then, Mr. Jones?

A. He said he got in trouble with a white woman in Folkston, Georgia.

[fol. 266] Q. Did he tell you who it was?

A. No, he didn't tell me that.

Q. Did he tell you what kind of trouble?

A. Yes.

Q. What did he say?

A. He said he raped a white woman in Folkston.

Q. Now, what happened after then? What did you say to him?

A. I asked him if he wanted to make a statement to that effect, and he said he did.

Q. Now, about what time of the day or night was that?

A. Oh, it was probably 6:30. I was putting some prisoner in the jail at the time.

Q. Did you suggest who to make a further statement to or what?

A. Well, I asked him did he want to make a statement to the sheriff in regard to this, and he said he did.

Q. Did you make arrangements for it at his request?

A. I did.

Q. And who was the sheriff of Ware County at that time?

A. Sheriff Robert E. Lee.

Q. Is he still sheriff now?

A. He is.

Q. And did you make that arrangement for Sims that he had requested?

A. I did.

Q. Did you take him before the sheriff to make that statement?

A. Yes, sir, he was carried before the sheriff.

Q. About what time was he carried before the sheriff to make a statement?

A. 10:30 the same night.

Q. And where was this?

A. It was in the interview room on the first floor in the [fol. 267] Ware County jail.

Q. Is that the place you customarily interview prisoners?

A. Yes, sir.

Q. Now, who was present?

A. Sheriff Robert E. Lee, B. C. Worley, Constable, 1231st District, and Chief Estis Johnson, Ware County police.

Q. Mr. Jones, at that time did he make a statement?

A. He did.

Q. Was it reduced to writing?

A. It was put in writing.

Q. At that time did he make the statement voluntarily?

A. He did.

Q. Did you or anyone else there—

The Defendant's Attorney: (Interposing) I object to that, your Honor. He is leading the witness.

The Court: All right, don't lead the witness.

Q. (By the Solicitor General) Did anybody offer him anything to make a statement?

A. No, sir.

The Defendant's Attorney: We move that the answer be stricken. That's leading also.

The Solicitor General: The Code sets out what questions to ask.

The Court: Well, ask him the statutory questions.

Q. (By the Solicitor General) Did anybody offer him anything to make a statement?

A. No.

Q. Was he threatened in any way?

A. No, he was not.

Q. Was he promised any hope of reward?

[fol. 268] A. No.

Q. Or the remotest fear of injury put to him?

A. No, sir.

Q. Mr. Jones, who was the presiding officer there?

A. Sheriff Robert E. Lee.

Q. Who was in charge?

A. Sheriff Robert E. Lee.

Q. And you said this statement was reduced to writing—now, who reduced it to writing?

A. As he dictated it to me I copied it down.

Q. And when you took it down what happened to the statement then? Did he read it or what happened, if anything?

A. He told me he could not read, and I read it to him.

Q. And after you read it to him was the statement signed?

A. It was signed.

Q. And when was it signed?

A. Upon completion of it. It started about 10:30, and it took about thirty minutes, maybe, or thirty-five. Somewhere in that neighborhood.

The Solicitor General: I will ask the Court Reporter if he will mark this "Exhibit No. 2" for the State.

(The document referred to was thereupon marked for identification, "State's Exhibit 2".)

Q. (By the Solicitor General) Mr. Jones, I hand you Exhibit No. 2 for the State. Would you examine State's Exhibit No. 2? What is that?

A. It is the statement that was given to me by Isaac Sims on 4-13-'63 at 10:30 P.M.

Q. Was that statement signed?

A. It is.

[fol. 269] Q. Who signed it?

A. Isaac Sims.

Q. Is this Isaac Sims over here, the defendant, who signed it?

A. It is.

Q. Now, who was present when that was signed?

A. Robert E. Lee, Sheriff of Ware County, B. E. Johnson, Chief of the Ware County Police, and B. C. Worley, Constable of the 1231st District, and myself.

Q. And I believe you said Sheriff Lee was in charge?

A. Yes, he was.

Q. And it was turned over to him?

A. That's right.

The Solicitor General: He's with you.

The Defendant's Attorney: Your Honor, we move to strike the witness' testimony on the ground that the testimony is incompetent, in that it does not support the requirements of the due process of law of the 14th Amendment to the United States Constitution, and of Article 1, Section 3, of the Constitution of the State of Georgia of 1945, in that the Statutes of Georgia—the Code—which

permits a witness to testify as to the four or five leading questions there as to whether or not there was any hope or fear or any reward, or the slightest hope of injury or benefit, and that sort of thing, are inadequate to lay the constitutionally required foundation for the introduction of an extra judicial statement made by a defendant who purportedly made such statement while in the custody of police officers. For that reason I move that the witness' testimony be stricken.

The Court: I will overrule that motion.

The Solicitor General: He's with you.

Cross examination.

[fol. 270] Q. (By the Defendant's Attorney) I believe you testified that you first saw the defendant in the jail about 6:30 in the evening of April 13th, 1963? Is that correct?

A. I did.

Q. And he was on the elevator or in the cell when you first saw him?

A. In the cell.

Q. Was anyone in the cell with him?

A. No.

Q. How large was the cell in which he was contained?

A. About, probably 8 by 8—8 by 10, or something like that.

Q. Could you see him in the cell?

A. It was just a little door we feed through. After him speaking to me I just looked toward him.

Q. About how wide is that little door?

A. Oh, probably that wide (indicating); maybe that high (indicating).

Q. For the record, how wide would you say that is?

A. Oh, probably about 12 by 12.

Q. Is there any glass in that door?

A. No.

Q. Just three bars.

A. Three or four, yes.

Q. And did you get a chance to see his face?

A. Yes, I could see just the face.

Q. And did you see any marks on his face?

A. I did not.

Q. You didn't see any marks at all?

A. No.

Q. You didn't see any marks near his right eye?

A. I did not.

[fol. 271] Q. Nothing at all?

A. I didn't see anything.

Q. Was the light on in the cell?

A. Well, the cell wasn't dark. It was just the normal lights on on the outside, but as to whether there was a light on in the cell, I don't remember whether there was or not; but one end of the cell is barred in and the light from the windows outside comes in.

Q. Do you know whether or not there were any lights outside the window?

A. Yes, there's some down the walkway on the other side of the cell.

Q. Do you know whether or not these lights were on?

A. I do not.

Q. Now, I believe that you testified that at this time when you saw the defendant in the cell on the third floor of the Ware County jail you said he stated that he had been involved with a white woman? Is that right?

A. That's right.

Q. And that he said he'd raped a white woman? Is that right?

A. That's what he told me.

Q. Now, this is the first time you've ever testified in those words, isn't it?

A. I believe I testified at the other trial similar to it.

Q. I'll read you back your testimony: "Question (By Mr. Hayes): Now, what did he tell you up there? "Answer: Well, getting to back when he asked me was I working up there, and I told him yes, I asked him what was he doing in there, and he said he had been put in there for molesting a white woman. I said, 'In Folkston?' He said, 'Yes.' And I asked him what happened, and he started to tell me, and I said, 'Have you talked to anybody about this?' He [fol. 272] says, 'No'. I said, 'Would you be willing to make a statement to that effect?' He said, 'I will.' And, in turn, I went down to Sheriff Lee and told him what was said. Sheriff Lee, in turn, contacted Sheriff Sikes, and he told him to go ahead and get a statement, and the sheriff sent me upstairs and I brought the subject down and we obtained a statement from him."

Now was that your testimony at the previous trial?

A. Yes, it was.

Q. And you said in your previous testimony that the defendant, Isaac Sims, said he had been put in there for molesting a white woman. Is that right? Is that right?

A. But he also said what I stated.

Q. Is that the first time you ever testified to that effect?

A. Said what he had done, yes.

Q. You never testified in that manner?

A. Not as I remember I didn't.

The Solicitor General: Your Honor, he's getting into technical legal meanings—I suggest that the word "molest" and "rape" have the same interchanging meaning, and he's trying to get some kind of legal meaning out of it.

The Defendant's Attorney: Your Honor, I ask the Court to instruct the jury that these two words have different legal meanings.

The Court: Well, go ahead.

The Defendant's Attorney: I ask the Court to instruct the jury that "molest" and "rape" are not interchangeable terms.

The Court: Well, I think the jury heard the testimony. They can make up their own minds.

Q. (By the Defendant's Attorney) Now, when this conversation took place between you and the defendant Sims—[fol. 273] the testimony that I've read from here was your testimony in October of 1963? Is that correct?

A. As far as I know, yes.

Q. And your memory would be fresher then, wouldn't it?

A. Would be what?

Q. Your memory would be fresher than it would be now, wouldn't it?

A. I don't know whether it would or not.

Q. October of 1963 is certainly closer to the time than October, 1964, isn't it?

A. Yes, but I still remember what was said.

Q. You remember better now than you did then?

A. No, I wouldn't say I remember better, but I know what was said.

Q. You omitted to testify that?

A. I probably didn't tell it.

Q. But you were asked?

A. I don't know whether I was asked about that one specific question or not.

Q. The question asked by Mr. Hayes was: "Now, what did he tell you up there?"

A. You ask me what he told you up there?

Q. Yes.

A. The same thing that I stated—that he had molested a white woman.

Q. Now, at what time of the evening was it when you had this conversation with the defendant, Isaac Sims?

A. About 6:30.

Q. About 6:30?

A. Yes.

[fol. 274] Q. And where was Sheriff Lee at that time?

A. I don't know, personally, where he was at that time. I tried to get him at his home a little later on.

Q. So you didn't quite mean what you said when you testified that you went downstairs and got Sheriff Lee?

A. We got to go downstairs to get him, for he doesn't stay upstairs.

Q. But you don't mean that he was downstairs when you came downstairs, do you?

A. When I say I go downstairs to get him, I mean I go down to try to locate him.

Q. And you located him by telephone?

A. Yes.

Q. Was he down there?

A. No, he was not down there.

Q. You called him?

A. Right.

Q. Where did you call him?

A. To his home.

Q. Was he there?

A. Yes.

Q. About what time did he come to the jail?

A. Oh, I don't know. He was busy and came down a little later, but I don't know how long it was.

Q. He came down to the jail before 10:30, didn't he?

A. Yes.

Q. As a matter of fact, he had been down to the jail for about two and a half hours, hadn't he?

A. I don't know exactly how long he'd been down there.

Q. Would it have been about two and a half hours?

A. That I don't know. No way of knowing.
[fol. 275] Q. But you do know that he came to the jail before 10:30?

A. Yes, he did.

Q. Now, did you bring the defendant downstairs when the sheriff came?

A. No, I did not.

Q. You never did bring the defendant down?

A. No, the jailer. The sheriff told me to bring him on down, and I in turn told the jailer to bring him down.

Q. Now, had the defendant been waiting for the sheriff to get through with his other business before—

A. I don't know whether he had or not.

Q. Was he brought downstairs before 10:30?

A. Well, we brought him straight on down and started talking to him, and the time that I started talking to him was the time I put on this statement—10:30.

Q. So, you brought him down and started talking to him—

A. (Interposing) I didn't bring him down. The jailer brought him down and turned him over to us.

Q. Do you know whether the jailer brought him down at 10:30 or not?

A. Well, he started the statement at 10:30, and it was a minute or two after he brought him down before we started talking to him.

Q. So you know exactly when the jailer brought him down?

A. Well, I looked at my watch when I made the statement out. It says 10:30.

Q. Now, I believe you testified that Mr. Worley was there and Chief Johnson was there, in addition to yourself and the sheriff? Is that right?

A. That's right.

Q. And that Chief Johnson and Mr. Worley sat about [fol. 276] ten or twelve feet away from you and the sheriff and the defendant? Is that right?

A. Well, about eight or ten feet, or somewhere in that neighborhood, yes.

Q. And they were sitting next to each other? Right?

A. I think so.

Q. And you and the sheriff and the defendant were sitting at a table? Is that right?

A. Right.

Q. And you say the table was about 6 by 3?

A. The table was similar to the table that you've got there. Maybe just a little bit longer and maybe a little wider, but a table just like you got right there.

Q. About thirty-six inches high?

A. Yes.

Q. And the defendant sat at that end of the table there?

A. Right.

Q. And that was near the door?

A. Right.

Q. You sat about where Mr. Hayes is sitting?

A. About the middle of the table on the other side.

Q. About where Mr. Griffin is sitting?

A. Right.

Q. And the sheriff sat at the end of the table like that? Is that right?

A. Yes.

Q. And as the sheriff sat there and the defendant sat there and you sat here you wrote down what the defendant was supposed to say? Is that right?

A. What he did say.

Q. You wrote it down?

A. His words, yes.

[fol. 277] Q. Now, who was asking the questions?

A. Well, he just was talking to us about the thing. The sheriff told him to go ahead and tell just what happened, and he told us what happened, and I copied it just as near as I could what he said.

Q. There are some things that you copied in the statement that the defendant didn't say? Is that right?

A. Only with the exception of "freely and voluntarily"—do you want me to read here what he didn't say and what he did say?

Q. I'll ask you the questions. There were somethings that you put on the paper that the defendant did not say? Is that right?

A. That was about freely and voluntarily, and all, yes, but anything subject to what had happened is what he said.

Q. All right. And you put things at the beginning of the statement that the defendant didn't say? Isn't that right?

A. That is right.

Q. And you put some things at the end of the statement that the defendant didn't say? Is that right?

A. That's right.

Q. So, everything that's on the statement isn't what the defendant said? Is that right?

A. As already stated, the things that the defendant said are included in this statement, plus what I put forward and aft of it, about freely and voluntarily, and such like.

Q. Now, as you sat there and wrote the statement out in longhand the defendant didn't tell you how to punctuate it, did he?

A. No, he didn't.

Q. As a matter of fact, he didn't tell you how to spell the words, did he?

A. No, he didn't.

Q. You did all that yourself?

A. That is correct.

[fol. 278] Q. Now, the sheriff asked the defendant some questions, didn't he?

A. I don't remember whether he did or not.

Q. You don't know whether he asked questions or not?

A. No. He told him to tell as near as he could exactly what happened.

Q. You knew the defendant couldn't read or write, didn't you?

A. Not until he told me that he couldn't read.

Q. And you had been knowing him about twelve years, hadn't you?

A. Yes, but I didn't come in that close contact to ever have him to write anything for me or read anything for me.

Q. And the defendant thought you would be kind to him, didn't he?

A. I don't know. I never mistreated him. I never have.

Q. And the defendant thought you would be his friend? Is that right?

A. I don't know whether he did or not.

Q. As a matter of fact, you were the only person over there in the jail that the defendant knew? Isn't that right?

A. I don't know.

The Solicitor General: Your Honor, I object to that. That would be a conclusion. He doesn't know who the defendant knew.

The Court: Well, I don't think he could say.

The Defendant's Attorney: I withdraw the question, your Honor, and put it in other words, if I may.

Q. You knew that the defendant was not acquainted with Sheriff Lee, didn't you?

A. I didn't know that.

Q. You knew Sheriff Lee didn't know the defendant, didn't you?

The Solicitor General: Now, your Honor, that calls for a conclusion. He doesn't know what the sheriff knew or [fol. 279] what he didn't know. It's impossible to know.

The Court: Well, I agree with you.

Q. (By the Defendant's Attorney) Now, Mr. Dudley, you didn't explain to the defendant what is meant by the statement can be used against him in court, did you?

A. The sheriff did.

Q. The sheriff did?

A. Yes.

Q. What did the sheriff say?

A. He advised him of his rights; that he had a right to an attorney, and nobody would hurt him, and the statement that he was signing could be used against him in a court of law. He said that was all right.

Q. He said that was all right?

A. Yes.

Q. Now, you didn't try to find out whether the defendant, in fact, understood what was said, did you?

A. The sheriff was in charge of what was going on in there, and he advised him.

Q. So your answer would be that you didn't? Is that right?

A. Do what, now?

Q. Your answer would be that you didn't do anything to find out whether or not he understood what the sheriff was saying?

A. Well, he asked him in plain language did he understand that this could be used against him, and advised him of his rights and everything else.

Q. Now, Mr. Dudley, you are a law enforcement officer. Is that correct?

A. Yes.

Q. And you have been a sheriff in this county for about seven years?

A. No, I served about six and a half as deputy in this county.

[fol. 280] Q. And you were a law enforcement officer some place else before then, weren't you?

A. Right.

Q. About ten years?

A. Right.

Q. Where was that?

A. Fernandina.

Q. Fernandina, Florida?

A. That's right.

Q. And you've been over in Ware County about how many years?

A. Three and a half or four, or somewhere along there.

Q. So, for about twenty years you've been a law enforcement officer?

A. That is right.

Q. And you understand these things, don't you?

A. I think I do.

Q. And you think that you understand these things better than the defendant, don't you?

The Solicitor General: Now, your Honor, that would be a conclusion. He doesn't know what the defendant understands. He couldn't possibly know.

The Court: I think you could ask him what he understands, but what he thinks the defendant understands I don't think would be admissible.

The Defendant's Attorney: I withdraw that question.

Q. Mr. Dudley, these legal matters like you put on the front of that statement and at the end of the statement are pretty well understood by you, aren't they?

A. Yes.

Q. And even sometimes now you get confused when you go to court? Is that correct?

A. I think we all do.

[fol. 281] Q. Now, the defendant hadn't had any visitors prior to the time the statement was made, had he?

A. That I don't know. Not being the jailer I don't know whether he had or not.

Q. You didn't see any visitors?

A. No, I did not.

Q. Now, you didn't tell the defendant he had a right to make telephone calls from the jail, did you?

A. No, I did not.

Q. You did not?

A. No. He didn't ask.

Q. And you didn't tell him?

A. No, I did not.

Q. Did you ever offer to call the defendant's family?

A. He didn't ask me to. I didn't offer, either.

Q. And you didn't offer to call a lawyer?

A. No, he didn't ask me to.

Q. And you did not offer to call?

A. I did not.

The Defendant's Attorney: The witness is with you.

Redirect examination.

Q. (By the Solicitor General) Do you know his family?

A. Not as I know of.

The Solicitor General: You can come down.

(Witness excused)

(Whereupon, at 10:40, P. M. a short recess was taken).

After recess.

The Court: You may proceed.

ROBERT E. LEE was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

[fol. 282] Q. (By the Solicitor General) Will you state your name for the record?

A. Robert Lee.

Q. What position do you hold in Ware County, if any?

A. Sheriff of Ware County.

Q. Were you sheriff in April, 1963?

A. Yes, sir.

Q. Sheriff, do you remember the occasion back on April 13th, 1963, when Nola Jean Roberts was raped?

A. Yes, sir.

Q. Sheriff, I will ask you if you had an occasion to see the defendant, Isaac Sims, here before.

A. Yes, I have.

Q. Sheriff, did you see him on the 13th day of April last year—'63?

A. Yes, sir.

Q. About what time of day or night did you see him?

A. Approximately 10:30 P. M.

Q. And where did you see him?

A. In the jail in Ware County.

Q. And whereabouts in the jail?

A. Downstairs in the interview room.

Q. Did you ever see him any other place in the jail except in the interview room?

A. Later upstairs on the third floor later. Not that night. It was several days later.

Q. You did see him sometime later up there?

A. Yes.

Q. But I'm talking about on this night.

A. That's the only time.

Q. And when you first saw him on April 13th that night was anybody else in the interview room except you and the [fol. 283] defendant Sims?

A. Three other persons.

Q. Who was that, Sheriff?

A. Dudley Jones, Estis Johnson, and B. C. Worley.

Q. Did the defendant make any statement to you or in your presence?

A. Yes, he did.

Q. Who was the presiding officer there?

A. I was.

Q. Who was in charge?

A. I was.

Q. What were the circumstances surrounding him making that statement?

A. I received a call from Dudley Jones, Deputy Sheriff.

Q. Don't tell what he said. Now, you received a call, and what happened?

Is that correct?

A. That's correct.

Q. It says, "I was driving down the St. George highway."

Is that right?

A. That's the statement he made.

Q. And it's all written on your stationery? Is that right?

A. Right.

Q. And there are some words that were crossed out? Is that right?

A. One word crossed out there was "approx".

Q. And another word is crossed out down there? Is that right?

A. The word crossed out down here is "lady's".

Q. And there's another word that's crossed out, isn't it?

A. Well, that's not a word there.

Q. But it is crossed out, whatever it is?

A. Well, that's not a word.

Q. But it is crossed out, isn't it?

A. Right.

Q. All right. Now, that's Page 1, isn't it? Now, the defendant didn't tell Mr. Jones to cross it out, did he?

A. That's how come it crossed out.

[fol. 289] Q. He told him to cross it out?

A. It was read back to him.

Q. And the defendant said, "Cross it out"?

A. Right.

Q. What about down here where there is no word?

A. Down where?

Q. Down here at the bottom of the page.

A. Well, there wasn't supposed to be a word there.

Q. The defendant didn't tell him to cross out any word that wasn't supposed to be there, did he?

A. Well, I don't know about that.

Q. So, these corrections down here, they are not initialed by the defendant, are they?

A. You notice here—you see this "approx", and "approx" is marked, and "about" put in. He said "about". "Approximately" and "about" mean about the same thing. Either word would have been all right in there, but he used the word "about".

Q. He didn't initial that change, did he?

A. No.

Q. And originally it was put up there "in color", wasn't it, and that was crossed out?

A. Where is that?

Q. See right here. See where that "approx" is crossed out there are two crossed out words.

A. Well, it's stated "1953 or 54 Bel Air Chevrolet, brown and white in color"——

Q. The "color" is crossed out, isn't it?

A. Right. And the "white" is still on there.

Q. But the "color" is crossed out?

A. Right.

Q. Now, when the defendant said that he was at the home, in this statement, of a girl named Marguerite?

[fol. 290] A. Right.

Q. Are you sure it wasn't "Margie"?

A. That's the word he gave.

Q. And you are sure that he gave the word "Marguerite"?

A. Right.

Q. And not "Margie"?

(No response)

Q. Now, I notice the statement on the last page, which is the fourth page, isn't it?

A. Right.

Q. And it says, "I have read"—and that's crossed out. Isn't it?

A. How come that crossed out, he didn't read it, and the words "I have read"—the word "read" is marked out, and "I have had this statement read to me."

Q. The word "read" was written in there before you found out he couldn't read?

A. Well, that's how come that marked out—because he couldn't read. It had to be read back to him.

Q. I'm asking you a question now——

A. (Interposing) That word would have been in there if he could have read it.

Q. Now, Sheriff Lee, the word "read" is crossed out, isn't it?

A. Right.

Q. You crossed that out after you learned that he couldn't read, didn't you?

A. Well, if he could have read the word would have been

A. After going down to the jail I telephoned Sheriff Sikes, and then Isaac Sims was brought downstairs to the interview room, and in the presence of three others I've named and myself he made a statement.

Q. At whose request did he come down and make the statement?

A. He came down—he made the statement that he wanted to make a statement of what had happened.

Q. And, Sheriff, when the statement was made did you or anyone else promise him anything to make a statement?

A. No, sir. He was advised by me that his statement could be used against him in court, and that before he made a statement he was entitled to an attorney.

Q. Was he induced by you or anybody else to make any statement?

A. Yes, sir; I—

Q. (Interposing) Was he induced by you?

A. I identified myself and the other three officers.

[fol. 284] Q. You didn't understand the question.

The Defendant's Attorney: I think the witness answered it.

The Solicitor General: I asked him if he or anyone else induced him to make a statement.

The Defendant's Attorney: He didn't answer like the Solicitor wanted him to.

Q. (By the Solicitor General) I will re-ask the question, Sheriff: Was he induced by you or anybody else to make a statement?

A. No, sir.

Q. Was the slightest hope of benefit or reward offered to him to make a statement?

A. No, sir.

Q. Was the remotest fear of injury put to him in any way?

A. No, sir. He made the statement freely and voluntarily.

Q. Did you advise him of his Constitutional rights?

A. Yes, I advised him that before he made a statement he was entitled to an attorney.

Q. Did he say he wanted one or didn't want one?

A. He said he didn't want one.

Q. All right, what else did you advise him?

A. I advised him that the statement he was going to give could be used against him in court.

Q. Sheriff, was that statement reduced to writing?

A. Yes, it was.

Q. Who took it down?

A. Dudley Jones.

Q. Sheriff, I will hand you Exhibit No. 2 for the State and ask you to examine it. Let me ask you this: At whose direction was the statement made? Who was in charge of it?

A. I was.

[fol. 285] Q. Will you examine Exhibit No. 2 for the State that I just handed to you?

A. This is the statement that was taken by Deputy Sheriff Dudley Jones on the night of April 13, 1963, in the presence of myself, Chief Johnson, Dudley Jones, and B. C. Worley.

Q. Was it made under your supervision and control?

A. Yes, sir.

Q. Is that the statement that was made?

A. Yes, sir; this is the statement that was made. It consists of four pages. Isaac Sims signed each page at the bottom.

Q. Will you read that statement to this jury?

The Defendant's Attorney: Your Honor, I object and move that the witness' testimony be stricken from the record on the same ground, without repeating it, that I moved to exclude Mr. Dudley's testimony, because the foundation to make that statement admissible has not been laid. I raise the same objection.

The Court: I overrule the objection.

Q. (By the Solicitor General) Go ahead and read it.

The Defendant's Attorney: Your Honor, we'd like to have the opportunity to examine this witness before the statement is read into the record.

The Court: All right.

The Solicitor General: Would you like to do it at this time?

The Defendant's Attorney: I believe the rule requires that the jury be excused.

The Court: All right, let the jury go to the jury room.

(The jury thereupon retired from the court room.)

The Solicitor General: I was under the impression that he had already examined Sheriff Lee this morning concern- [fol. 286] ing this statement, and that is a matter of record.

The Court: All right.

The Defendant's Attorney: As your Honor knows, the rule has been recently changed by the Supreme Court of the United States, and we did have an opportunity to examine the witness today, and on that basis, your Honor, I withdraw my request that the jury be excused and let him proceed with the direct examination. I don't know whether the procedure being followed at this time satisfies the rule decided by the Supreme Court on June 22nd, 1964, that the Court must make judicial determination whether the statement was made voluntarily before it is read to the jury. We did make an examination today, and I withdraw the request for the jury to be excused.

The Court: All right, bring the jury back.

(The jury thereupon returned to the jury box.)

Q. (By the Solicitor General) Now, Sheriff, would you read the statement that the defendant made on that occasion—read it to the jury.

A. The dated, "4-13-63. 10:30, P. M. I, Isaac Sims, Jr., age twenty-seven, resident of Folkston, Georgia, make the following statement, freely and voluntarily. I have not been promised anything—I have not been threatened or promised anything. I know that this statement can be used against me in court. I, Isaac Sims, Jr., on April 13, 1963, was driving Cleo Jackson's 1953 or 54 Bel Air Chevrolet, color brown and white, about 10 o'clock, A. M. I was driving down the St. George highway. I drove up behind a white woman driving a new looking car, color white. I was drinking whiskey at the time. The closer I got to her car I had a feeling to have dealings with this white woman. I took the car I was driving, bumped this lady's car several times. Finally I knocked her car into the ditch. I got out [fol. 287] of my car, and as she got out of her car I grabbed her. I pulled her across the road into some bushes. She was wearing pedal pushers, grey looking. She kept fighting me, and I hit her in the face, knocking her down. She kept hollering for help. Then I was afraid someone would hear her, so I choked her. Then I tore her pedal pushers off. She was in her monthly period. She had a Kotex on.

I pulled that off of her and forced her to have intercourse with me. When I finished I walked back to where the car I was driving was parked. I could not get my car started. It would not crank. So then I realized I was in trouble, and I ran through the woods to Mr. Walter Hopkins' place at Toledo, a distance of about ten miles. Some colored boys told me there was a lot of people and dogs hunting someone. These colored boys went to Mr. Stokes' and told him where I was, at the home of a girl named Marguerite. Mr. Stokes and another white man came and picked me up and carried me to the sheriff. The pants and shorts I was wearing had blood on them.

"This statement is made freely and voluntarily in the presence of Sheriff Lee, Ware County, Georgia, Chief Johnson, Chief of Ware County Police, Dudley Jones, Deputy Sheriff, Ware County, Georgia, and B. C. Worley, Constable 1231st District of Ware County, Georgia.

"I have been informed of my legal rights by Sheriff Robert E. Lee that I did not have to make any statement whatsoever, knowing that this statement can be used against me in a court of law.

"I have had this statement read to me, which consists of four pages, which is a true and correct statement made by me.

"Witness: Robert E. Lee, Sheriff of Ware County, B. E. Johnson, Chief of Ware County Police, Dudley Jones, Deputy Sheriff, B. C. Worley, Constable."

Q. Who is it signed by, Sheriff? Is it signed?

[fol. 288] A. Yes, sir; signed by Isaac Sims.

Q. Is that the defendant over here?

A. Yes, sir.

Q. Did you see him sign it?

A. Yes, sir.

The Solicitor General: He's with you.

Cross examination.

Q. (By the Defendant's Attorney) Now, Sheriff Lee, this statement here says, "I was driving down the St. George highway". Then there is something that is scratched out. "I drove up behind a white woman driving a new looking car, color white."

left on there. He would have read it instead of having it read back to him.

Q. But it was crossed out after you learned that he couldn't read?

A. I don't know—I still don't know whether he can read or not.

[fol. 291] Q. But you know that is crossed out—"I have read"?

A. That is crossed out.

Q. You go along, and it says, "I have had this statement read to me, which consists of four pages, which is a true and correct statement made by me."

Now, there are only three pages of statement?

A. There are four pages there.

Q. You include the last page?

A. There are four pages you've got in your hand there.

Q. But the last page only says, "I"—

A. (Interposing) That's part of it.

Q. All four pages are part of the statement?

A. There are four pages of it.

Q. Was this word "read" stricken out before the rest of the sentence was written out?

A. I just stated a minute ago that if he had read the statement himself that would have stayed in there.

Q. Yes, sir; I understand that. I'm clear on that, now, but what I'm trying to get clear on now was the word "read" stricken out by Mr. Jones before the rest of the sentence was written out.

A. I don't know about that.

Q. Is that why there are two "reads" in the sentence?

A. How is that?

Q. There are two "reads" in the sentence—one is stricken out.

A. Well, if he had been able to read the statement that word would have been in there.

Q. Now, did you strike the word "read" out after the entire statement was written out?

A. I don't recall.

Q. Did you strike it out before or after the defendant signed it?

A. It was all stricken out just like you've got it now whenever he signed it. He signed each page.

[fol. 292] Q. So, before this statement was written out completely you knew that he couldn't read?

A. Except what he told me.

Q. And that accounts for the "have read" being stricken out?

A. I still don't know whether he can read or not. I just take his word for it.

Q. You believed him when he said it, didn't you?

A. Just what he told me was put down.

Q. Now, the substantive part of this statement consists of three pages, doesn't it?

A. That's right.

Q. And the fourth page is only a formal part of the statement? Isn't that right?

A. Right.

Q. And it says on that, "I have had this statement read to me, which consists of four pages, which is a true and correct statement made by me."

A. There are four pages.

Q. Including this page right here?

A. That's right.

Q. Now, Mr. Sheriff, what time did you call on the defendant to come from the jail?

A. I really don't know.

Q. About what time?

A. Well, if I was just to make a guess—I really don't know what time it was.

Q. Was it in the morning or in the afternoon.

A. It was in the afternoon—at night—the first part of the night.

Q. It was after 6 o'clock?

A. I couldn't say.

Q. Now, let me ask you this, Sheriff Lee; were you called by telephone?

[fol. 293] A. I was either called on my radio or either the telephone. I don't recall which it was.

Q. Does the radio hook up and connect with your house?

A. How is that?

Q. Does the radio hook up or connect with your house?

A. No.

Q. If you were called by radio does that mean that you were in your car?

A. Right.

Q. Do you know whether you were called by radio or called by telephone?

A. I couldn't say.

Q. What's your best recollection?

The Solicitor General: He's already told him he didn't know.

The Court: All right.

Q. (By the Defendant's Attorney) Let me ask you this, Mr. Lee: Is it your testimony that you were called at home or in your car?

A. I didn't say I was called at home and I didn't say I was called in my car. I said I had been called on one of the two.

Q. Do you know which one?

A. I don't know.

Q. Would your testimony be the same if I told you that Mr. Jones, Dudley Jones, testified that he telephoned you at home?

A. Well, if he said he called me at home, if I was at my house and he called me, that's probably correct, because I don't recall it.

Q. Now, do you recall testifying in court in October, 1963?

A. Yes.

Q. And do you recall being asked this question by Mr. Hayes: "Question: Now, were you called down to your office by one of your officers?" "Answer: Yes, sir; by radio."

[fol. 294] A. Well, that could be correct. I just stated by radio or either by telephone.

Q. So, Mr. Jones was in error, then?

A. I wouldn't say. I will say now like I did a minute ago, that I was called by telephone or either by radio.

Q. Now, prior to the time that you were either called by radio or by telephone did you know anything about this case?

A. Except what little bit I heard on the radio.

Q. You mean on the news radio?

A. On the car radio.

Q. The car radio?

A. Yes.

Q. You mean you received the signal on the car radio?

A. Right.

Q. But, before you came down to the jail house you had some knowledge that this offense had been committed? Is that correct?

A. What little I'd heard on the radio.

Q. And you knew that the defendant, Isaac Sims, had been brought to the jail?

A. I knew he was in the Ware County jail.

Q. And you got that over the radio?

A. Well, I wouldn't say whether I got that part over the radio or found it out there at the jail.

Q. But you do know that radio signals were being sent by whom?

A. Well, I couldn't say who. There were several officers using the radio. I couldn't tell you which one.

Q. Did you learn about this in the afternoon of April 13th or in the evening?

A. It was late in the afternoon.

Q. Was this before 6 o'clock?

A. I couldn't say what time it was.

[fol. 295] Q. Did you have any conversation with Sheriff Sikes?

A. Yes, I did.

Q. Was that conversation prior to the time you went to the jail?

A. I talked with Sheriff Sikes from the jail.

Q. From the jail?

A. Yes.

Q. You hadn't talked with him before that?

(No response)

Q. You talked with Sheriff Sikes before you took the statement?

A. Right.

Q. You knew that Sheriff Sikes had sent the prisoner up to the jail for safe keeping, didn't you?

A. I knew that he was sent up to the Ware County jail. I knew he was in the Ware County jail.

Q. Do you remember testifying here in October, 1963?

A. Yes.

Q. Do you remember this question being asked you: "Why did you have this defendant in your jail, Sheriff?"

"Answer: Sheriff Sikes sent him up for safe keeping."

"Question: For safe keeping?" "Yes".

So, you knew he was in there for safe keeping?

A. That's right. I knew he was in there.

Q. And you were asked another question: "What do you mean by safe keeping, Sheriff?" And your answer was: "Well, usually when something like this happens it is better for a prisoner to be kept in a different county."

Was that your answer?

A. That's correct.

Q. And the next question was: "For what purpose?"

"Answer: Well, I think maybe in this case Sheriff Sikes' jail wasn't sufficient, for one reason." And then you were asked: "In what way? Do you know why it wasn't sufficient?" "Well, I wouldn't know to that extent."

Do you remember being asked that in October, 1963?

"Now, do you know, Sheriff, whether or not at the time the prisoner arrived at your jail until this statement was taken whether he was visited by anyone?" And your answer was, "Not that I know of."

And you testified earlier that he was not represented by a lawyer, did you?

A. That's correct.

Q. You knew that the sheriff, Mr. Sikes, wasn't looking for anybody else for this offense, didn't you?

The Solicitor: Now, Your Honor, I object to the question as being a conclusion. He couldn't possibly know what Mr. Sikes was doing.

The Defendant's Attorney: Well, your Honor, he talked with Mr. Sikes.

The Court: Well, I think he can ask him if he knew.

Q. (By the Defendant's Attorney) Do you know whether or not Mr. Sikes—Sheriff Sikes—was looking for anyone else?

A. I really don't know.

Q. But you had talked to him prior to taking the statement?

A. Right.

Now, you didn't read the statement back to him yourself, did you?

A. Mr. Jones read it back.

Q. Now, you made no effort prior to the time you took

this statement to bring Isaac Sims before a Justice of the peace or other magistrate, did you?

A. I did not.

Q. You had no warrant for the arrest of the defendant, did you?

A. I don't recall whether there was a warrant there at [fol. 297] the time or not. I wouldn't say whether there was a warrant or there was not.

Q. You had no knowledge of the offense and the manner in which it had been committed other than what you got over the radio? Is that correct?

A. Just what little I heard over the radio and what Isaac told me in the statement.

Q. So, at the time the statement was taken all of the knowledge you had about the offense was a matter of hearsay? Is that correct?

A. From the statement Isaac gave me I knew more about it then than I did before.

Q. All right, then, let me ask you this question: Just prior to the time you took the statement the only knowledge you had about the offense was hearsay?

A. Right.

The Defendant's Attorney: Your Honor, we have terminated the examination, and we move that the statement that was read into the record be quashed, and that the jury be instructed to disregard the statement, the grounds being that it was not made in compliance with the 4th, 5th, and 6th Amendments to the United States Constitution as made applicable to the several States by the 14th Amendment thereto, and by virtue of Article 1, Paragraphs 3 and 5 of the Constitution of the State of Georgia of 1945.

We move on constitutional grounds, your Honor, that all testimony relative to the statement and the statement itself be excluded from the evidence and that the jury at this time be instructed to disregard the statement.

The Court: I will overrule that motion. Go ahead.

[fol. 298] Redirect examination.

Q. (By the Solicitor General) Sheriff, isn't it true that all the prisoners are kept in your jail for safe keeping?

A. Partly, yes.

Q. He asked the question if you had taken him before a

magistrate before he made the statement you referred to—now, this was on a Saturday night, wasn't it, Sheriff?

A. Right, Same night that the crime was——

Q. Was Judge Hodges in the court house at that time of night?

A. No.

Q. Was there any other judge available at that time of night?

A. No, sir.

Q. Was there any judge available to take him before at that time?

A. Not at that time of night, no, sir.

The Solicitor General: You can come down.

Recross examination.

Q. (By the Defendant's Attorney) Sheriff, did you make any attempt to ascertain whether or not any judge was available at that time?

A. Sheriff Sikes was attending to that.

Q. But I asked you did you make any attempt to find out?

A. Not after the conversation I had with Sheriff Sikes, I didn't.

Q. Approximately how many Justices of the Peace are there in Ware County?

A. One for each—well, two in the 1231st.

Q. What about in Waycross?

A. Well, that covers that.

Q. They live in Waycross?

A. Right.

Q. Did you make any attempt?

[fol. 299] A. I just stated after I talked with Sheriff Sikes that I made no attempt after the conversation with him.

Q. And you don't know whether or not Sheriff Sikes——

A. (Interposing) I do not.

The Defendant's Attorney: Thank you.

The Solicitor General: You can come down.

(Witness excused)

F. F. CORNELIUS was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Solicitor General) Your name is F. F. Cornelius?

A. Yes, sir.

Q. And you are with the Georgia Bureau of Investigation?

A. Yes, sir.

Q. And you were with them back in April, 1963.

A. Yes, sir.

Q. Mr. Cornelius, have you seen this defendant here, Isaac Sims, Jr., on a previous occasion?

A. Yes, sir.

Q. Do you recall the occasion back when Nola Jean Roberts was raped on or about the 13th day of April, '63?

A. Yes, I do.

Q. Do you recall what day of the week that was?

A. On Saturday.

Q. And did you talk to this defendant on the Monday following that?

A. Yes, I did.

Q. And where did you see him on that Monday?

A. I saw him at the jail at Waycross and brought him down here to Folkston.

Q. Did he make any statement to you during that time? [fol. 300] A. I had a copy of this (indicating)——

Q. Excuse me, Would you examine Exhibit No. 2 for the State?

The Defendant's Attorney: Your Honor, I object to this. I don't know the purpose of it. He certainly doesn't need to have his recollection refreshed.

The Solicitor General: I wanted him to examine it. He's objecting to it when he didn't know what I was going to ask him about it.

The Defendant's Attorney: Your Honor, he wasn't there when the statement was taken, and it would certainly be hearsay as to the witness.

The Solicitor: The only thing I've asked him to do was to examine the document.

Q. Have you examined the document?

A. Yes, I have.

Q. Have you previously seen this document. Exhibit No. 2 for the State?

A. Yes, sir.

Q. And are you familiar with the contents of it?

A. Yes, I am.

Q. Have you read the defendant, Isaac Sims, the contents of that statement?

A. Yes.

Q. Have you read it to him?

A. Yes, I have.

Q. Where were you when you read it to him?

A. I was down in the sheriff's office right here in the court house.

Q. When was that?

A. That was on Monday afternoon, on April 15, '63, about one o'clock in the afternoon, if I'm not mistaken.

Q. Did you read the entire statement to him?

A. Yes, I did.

[fol. 301] Q. Did you ask him any questions about the statement?

A. I asked him if that was true, and he said, "Yes, sir; that is right."

The Defendant's Attorney: I object to that, your Honor, I move that that be stricken on the basis that no proper foundation has been laid.

The Solicitor General: I think that would be proper, your Honor, and I will lay the foundation.

The Court: All right.

Q. (By the Solicitor General) Mr. Cornelius, prior to you reading that to him, now, at the time was he induced by you or anybody else to make—to answer this question?

A. No, sir.

Q. Was he promised anything by you or anybody else to make a statement?

A. No, sir; he was not.

Q. Was he threatened in any way?

A. No, sir.

Q. Was the remotest fear of injury put to him?

A. No, sir.

Q. Was his answer voluntary?

A. Yes.

Q. Now, in relation to Exhibit 2 for the State, what name appears on the bottom as being signed there?

A. Isaac Sims, Jr.

Q. And are the contents of Exhibit 2 what you read to the defendant on this occasion?

A. Yes, that's right.

Q. And did you read him all the statement?

A. Yes, I did.

Q. Did you ask him any questions when you read the statement to him?

A. I asked him if that was right, and he said, "Yes, that [fol. 302] is right."

Q. And when was that and where was it?

A. In the sheriff's office on Monday, April 15th, after it occurred on April the 13th.

The Solicitor General: He's with you.

Cross examination.

Q. (By the Defendant's Attorney) Mr. Cornelius, on April 15th, 1963, in the sheriff's office there the defendant wasn't represented by an attorney, was he?

A. Not at that time, no.

Q. And you didn't have a warrant for his arrest, did you?

A. There was a warrant, yes.

Q. Did you have it?

A. We had the warrant when we brought him from Ware County jail to Charlton County.

Q. Who issued the warrant?

A. I don't remember.

Q. Who applied for the warrant?

A. That I do not know.

Q. Where is the warrant now?

A. I don't know.

The Solicitor General: I will state to counsel that if he wants the warrant if he will ask for it it will be made available to him.

The Defendant's Attorney: Thank you.

Q. Mr. Cornelius, now, on April 15th down in the sheriff's office who was present?

A. A. H. Holley, a State Revenue Agent, J. A. Barfield,

Chief of Police of Folkston, Georgia, Marvin Lloyd, a policeman of Folkston, Georgia, Billy Brooks, a police officer of Folkston, Georgia, and Homer W. Allen, a Deputy Sheriff.

Q. Were all these police officers in uniform?
[fol. 303] A. I believe so, yes.

Q. Did they have on their weapons?

A. I don't remember specifically whether they did or not, but I'm sure some of them did. I wouldn't say yes or no, whether they all had them on or not.

Q. But some of them did?

A. I presume they could have or could not. I don't specifically remember. A lot of them wear uniforms without wearing side arms.

Q. Now, you are with the State Patrol, aren't you?

A. I'm investigator for the State.

Q. For the State of Georgia?

A. Yes.

Q. To which division are you attached?

A. District No. 7.

Q. And what's your specific title?

A. Agent with the Georgia Bureau of Investigation.

Q. Known as the GBI?

A. Yes.

Q. You don't wear a uniform, do you?

A. No.

Q. But you carry side arms?

A. Right.

Q. Did you have it with you then?

A. At that time?

Q. Yes, sir.

A. Yes.

Q. Now, how large is the office where the defendant was on April 15th, 1963?

A. I never measured it, but just roughly I'd say 14 feet wide by about 22 feet long.

[fol. 304] Q. Was there anyone else of the negro race inside that office at the time?

A. People were going and coming. I mean, it wasn't any closed session. They were attending to other business, colored and white.

Q. Was the defendant handcuffed?

A. We did not have the cuffs on him down there, no.

Q. Had he been handcuffed?

A. He had in transportation from Waycross here.

Q. Did he have manacles on his feet?

A. No. Just handcuffs.

Q. Just handcuffs.

A. Yes.

Q. Was he handcuffed in front or behind his back?

A. In front.

Q. Did you tell him that he did not have to answer the questions?

A. I just read the same thing off to him that's on there.

Q. So, you didn't tell him?

A. No, but I read it just like this was.

Q. You didn't volunteer to call a lawyer, did you?

A. No, I did not.

Q. You didn't call a relative, did you?

A. I had already contacted his sister on Sunday morning, and I carried some clothes back to the Ware County jail for him.

Q. You contacted his sister—that's Mrs. Thomas, isn't it?

A. I don't even remember her name, but she lives out here on this St. George road.

Q. But you got some clothes from her?

A. She gave them to me and asked if I would carry them to him, and I said yes, I would.

Q. Had you been to visit the defendant in the Ware [fol. 305] County jail prior to the time you talked to his sister?

A. No.

Q. You hadn't?

A. No.

Q. How did you know that he needed clothes?

A. The late Sheriff Sikes and myself went down there talking to her and making an investigation and getting up witnesses, and she said that she believed he'd need some clothes, and asked me if I would carry them, and I said, "I sure will."

Q. Do you know whether or not she had visited up there prior to the time you talked with her on Sunday?

A. I don't believe she had. From what she said to me I don't believe she had. Now, I don't know.

Q. Do you know whether or not she had talked with the

defendant Sims prior to the time he was in the office downstairs on April 15th?

A. I don't know whether she had seen him between then or not.

Q. Approximately how far is Waycross from Folkston?

A. About thirty-five miles.

Q. So, as far as you know, at the time the defendant answered the question downstairs he had not seen a lawyer, he had not talked with his relatives? Is that correct?

A. That's right.

Q. Do you know whether any offer was made to assure him of a lawyer at that time?

A. I do not.

Q. You know that you made none?

A. That's right.

Q. Now, Mr. Cornelius, how did you happen to be involved in the case?

A. I was called in on it by the late Sheriff Sikes.

Q. Was that on April 13th, the day it happened?

[fol. 306] A. I was called on the night of April the 13th, and I came down on Sunday morning, on the 14th.

Q. You weren't present, then, over in Dr. Jackson's office, were you?

A. No, I was not.

Q. Did you go out to the scene?

A. Yes, I did.

Q. When did you go out to the scene?

A. It was on Sunday morning.

Q. The day following the alleged incident?

A. Yes.

Q. Did you make any investigation out there?

A. There had been too many people stomped around.

Q. In other words, you didn't make any investigation?

A. Not there. It would have been impossible.

Q. Was the car still there that was alleged to have been operated by the defendant?

A. The car had already been removed when the sheriff and I went down there the next morning around 11 o'clock.

Q. Do you know where the car was taken?

A. It was taken to a garage at St. George. Which one I do not know.

Q. Do you know who took the car there?

A. I do not.

Q. Do you know the condition of the car at the time it was taken away?

A. I understand it was burned. That is hearsay. I do not know.

Q. But it is your understanding that it was burned?

A. My understanding.

Q. Did you see any evidence of fire out at the scene when you were there?

A. Apparently it hadn't burned that bad, no.
[fol. 307] Q. But you did see some evidence?

A. I wouldn't say enough to say that there was a fire. I couldn't say.

Q. Did you recover a pocketbook or a purse belonging to Mrs. Crawford, now—pardon me, Miss Roberts, now Mrs. Crawford?

A. The only thing I know about is one that was in her car, and I didn't see the pocketbook.

Q. Did you ever examine her car?

A. No.

Q. Were you the chief investigating officer there?

A. Sheriff Sikes and myself.

Q. And would you say you equally ranked in authority?

A. No, Sheriff Sikes, being sheriff, was top law enforcement officer.

Q. But you were more specialized?

A. In some fields.

Q. Would these fields include gathering evidence?

A. Yes.

Q. Finger prints and things of that sort?

A. Yes.

Q. Foot prints and things of that sort?

A. Yes.

Q. Collection of hairs and clothing and things of that sort?

A. Yes.

Q. That would be your specialty?

A. Yes.

Q. And you collected none of these things with respect to this case, have you?

A. Her car and the other car had already been removed.

Q. Then, you didn't pursue the cars, did you?

A. No, I did not.

Q. When you saw the defendant at the Ware County jail

[fol. 308] did you have a chance to observe his person—his face?

A. I didn't pay him too much attention, because when I saw him on Sunday morning I just handed him the clothes, and that's about all.

Q. Did you ever have an opportunity to examine the shirt that he was wearing on April 13th?

A. I never did see the shirt, no.

Q. Did you ever see a bruised mark or a cut on his face?

A. Seemingly he had a mark on there. I couldn't say how bad or what.

Q. But you are very positive he had a mark?

A. He did have a skin, yes.

Q. Now, Mr. Cornelius, you've testified in this case about four times, haven't you?

A. No.

Q. Well, let's see if I can refresh your memory. Do you remember the incident that happened on April 15th, 1963, downstairs in the sheriff's office?

A. Right.

Q. And then you appeared in court again before—I believe before Judge Hodges on August 22nd, 1963?

A. I was at that hearing, yes.

Q. Now, this was a second preliminary hearing?

A. Right.

Q. At this hearing an attorney had been appointed to represent the defendant? Is that correct?

A. Yes.

Q. Do you know who that attorney is?

A. Colonel—I can't think of his last name. I know him.

Q. But you do know that when you appeared the second time before Judge Hodges that an attorney had been appointed?

A. Yes.

[fol. 309] Q. You know that the defendant was held in jail from April 13th, 1963, to about May 5, 1963, without an attorney being appointed, don't you?

A. Well, he made one statement that he didn't need a lawyer.

Q. You wouldn't have advised him that he didn't need a lawyer, would you?

A. No, I wouldn't have advised him that. It wasn't my job.

Q. Did you advise him that he did need a lawyer?

A. It's not my job to advise him. I just leave that up to the individual.

Redirect examination.

Q. (By the Solicitor General) As a matter of fact, you don't know whether he had a lawyer or not, do you?

A. I really do not, no, sir.

Q. Now, a while ago when you were talking about whether or not he had talked to a lawyer or talked to his kinfolks, you don't know whether he had or had not, do you?

A. I do not, no, sir.

The Solicitor General: You can come down.

The Defendant's Attorney: Just a minute.

Recross examination.

Q. (By the Defendant's Attorney) When you answered Mr. Hayes' question you didn't mean to change your testimony about what was your impression when you talked to Isaac's sister, did you?

A. I said that I didn't know whether she had been there or not.

Q. But it was your impression that she had not?

A. So far as knowing, I don't know. There's a lot of difference in knowing and having an impression.

Q. And you haven't changed that testimony, have you?

A. No.

(Witness excused)

[fol. 310] The Solicitor General: Your Honor, at this time I'd like to tender in evidence Exhibit 1 for the State of Georgia, and the other exhibits contained therein, being Exhibits 1-A, B, C, D, and E, identified and displayed by Dr. Jackson, as being true and correct representations of Nola Jean Roberts on the 14th day of April, 1963—to show her condition.

The Defendant's Attorney: The defendant objects, your Honor, on the ground that there is no evidence to show that the machine that was used to make the pictures was in proper working order. There's no evidence to show that a responsible person made those slides. We don't know

whether the slides were doctored or not. Dr. Jackson testified that they were made up in New York. We don't know by what process at all.

We also present to the Court the fact that in none of the pictures was the person identified by the picture itself, and identifications can only be had by testimony of Dr. Jackson.

The pictures are highly prejudicial. The only thing they could do, we submit to the Court, is color the evidence, and we move the Court to exclude these pictures from evidence.

The Solicitor General: Your Honor, in reply to that, those pictures were identified by Dr. Jackson. He said he took them. He said he didn't know what kind of capable or qualified or reputable person that was. I think Dr. Jackson is a highly reputable person. He said he took the pictures, and he swore they were true and correct representations.

Now, in a case of rape we allege that this was rape by force, and we are introducing those pictures for the purpose of showing some of the force that was used by the defendant, Isaac Sims, on Nola Jean Roberts at the time he raped her.

The Defendant's Attorney: Your Honor, we say that whatever the pictures show, we don't know who shot them [fol. 311] except by Dr. Jackson, and he appears to be an extremely hostile witness.

The Court: Well, they are admitted over objection.

(The slides referred to were thereupon received in evidence)

The Solicitor General: Your Honor, with that evidence the State rests.

The Defendant's Attorney: I understand that the State no closed. Is that right?

The Solicitor General: As I understand the procedure of the State of Georgia, the State of Georgia rests, and it is incumbent on the defendant to either rest or do whatever they want to do.

The Defendant's Attorney: That's what I wanted to be clear about, your Honor. The State hasn't closed.

The Solicitor General: The State has not closed. The State of Georgia has rested.

The Defendant's Attorney: (Addressing the defendant)
Take the stand, please.

(The witness thereupon went to the witness stand)

The Defendant's Attorney: Your Honor, I have advised the defendant that under the law of Georgia he has the right to make a sworn statement, and in the event he makes a sworn statement he will be subject to cross examination by the State. I have advised him that he has a right to make an unsworn statement by the law of Georgia, and that in the event he makes an unsworn statement he cannot be cross examined by the State, but that his own counsel can help him to some extent.

I believe that is a fair representation of the law, your Honor.

Q. Will you state your name for the record, please?

A. Isaac Sims, Jr.

[fol. 312] **Q.** How old are you?

A. Twenty-nine.

Q. How far did you go in school?

A. Third grade.

Q. Pardon me?

A. Third grade.

Q. When did you leave the third grade?

A. When I was seventeen years old.

Q. Can you read or write, Isaac?

A. No, sir.

Q. Are your parents living or dead?

A. They dead.

Q. Do you remember being arrested on April 13th, 1963?

A. Yes, sir.

Q. Did you rape Miss Nola Jean Roberts?

A. No, sir. I don't know nothing about it.

Q. Did you beat Miss Nola Jean Roberts?

A. No, sir.

Q. Were you taken into custody over in Toledo?

(No response)

Q. Were you put in a car at Toledo?

A. Yes, sir.

Q. Were you brought over to Dr. Jackson's office?

A. Yes, sir.

Q. Will you tell the court and jury what happened when you were brought to Dr. Jackson's office?

A. Yes, sir.

Q. Will you tell the jury, please?

A. Well, they brought me over to Dr. Jackson's office and they carried me in there, about six or seven State Patrols, and Dr. Jackson beat me, and taken my clothes off, and then carried me over to the bigger hospital and stitched my eye [fol. 313] up where they kicked me over the eye, and put me on some white clothes—white pants, but I kept my shirt I had on.

Q. While you were in Dr. Jackson's office did he drag you around the floor?

A. Yes, sir.

Q. Will you tell the jury how he dragged you?

The Solicitor General: Now, your Honor, we object to counsel testifying for him. He's not just trying to aid him as little bit. He's just testifying.

The Defendant's Attorney: Your Honor, the defendant has such meager ability that we feel compelled to try to help him as much as we can, and I don't intend to lead him by any means.

The Court: Well, let the defendant make his own statement. You can prompt him and ask him questions, but don't just lead him.

Q. (By the Defendant's Attorney) What happened to you while you were in Dr. Jackson's office.

A. Well, he pulled me by my privates.

Q. What did you say?

A. Pulled me by my privates.

Q. Do you remember being over in the Ware County jail?

A. Yes, sir.

Q. Do you remember signing a statement?

A. If I did I didn't know what I was doing.

Q. You can come down.

A. There's one more thing I want to say, Judge.

The Court: Go ahead.

The Defendant: Whatever happened to this lady, I don't know anything about it. I'm really sorry of it.

The Defendant's Attorney: Do you want to come down now?

The Defendant: Yes, sir.

[fol. 314] The Defendant's Attorney: The defendant rests.

The Solicitor General: We close.

The Defendant's Attorney: The defendant closes.

The Court: All right.

(Evidence closed)

Acknowledgment of Service (omitted in printing)

JUDGE'S CERTIFICATE

I hereby approve and certify that the within and foregoing pages, numbered 122 through 245, constitute a true, correct, and complete transcript of the evidence proceedings as had before me in the above-captioned case commencing on October 7, 1964, and are approved as a part of the record herein.

This, the 15 day of January, 1965.

/s/ Ben Hodges Judge, Charlton Superior Court
Waycross, Judicial Circuit

[fol. 315] Filed in office this 15th day of January, 1965,
at 2 P. M. Clyde Woolard, Clerk.

[fols. 316-317] IN THE SUPERIOR COURT OF CHARLTON
COUNTY, GEORGIA

DEFENDANT'S EXHIBIT No. 1

CHARLTON COUNTY SUPERIOR COURT OCTOBER TERM, 1963

RAPE—Under Death Sentence

STATE OF GEORGIA,

v.

ISAAC SIMS, JR.

CONSIDERATION FOR COMMUTATION

It is the policy of this Board to make a thorough investigation into each case in which the prisoner is given a death sentence and to consider the same for commutation whether or not any application is made. No application having been made in this case, the Board proceeded to a consideration of it on its own motion. It has conducted a thorough investigation into the charge, the indictment and conviction of subject.

Now, in pursuance with the authority vested in the State Board of Pardons and Paroles of the State of Georgia, it is hereby

Considered, ordered and adjudged that commutation is denied.

It is directed that copies of this order be filed with the State Board of Corrections, the Clerk of Charlton County Superior Court and to the said Isaac Sims, Jr.

Given under the hand and seal of the State Board of Pardons and Paroles this the 6th day of November 1963.

State Board of Pardons and Paroles, [copy illegible],
Chairman. J. W. Claxton, Member. [copy
illegible], Member.

[fols. 318-319] IN THE SUPERIOR COURT OF CHARLTON
COUNTY, GEORGIA

DEFENDANT'S EXHIBIT No. 2

STATE OF GEORGIA,
County of Charlton:

Whereupon, the jury having found the defendant, Isaac Sims Jr., guilty of the offense of Rape, without a recommendation of mercy, it is considered, sentenced and adjudged by the court that said defendant be carried from the bar of this court to the common jail of Charlton County, Georgia, and there held in safe-keeping until called for by a guard from the State Board of Penal Administration who shall carry him from said jail to the Penal Institution designated by said Board, and there held as provided by law until the 13th day of November, 1963, at which time he shall be electrocuted at said Penal Institution as provided by law.

Granted in open court, this 9th day of October, 1963.

Ben Hodges, Judge Superior Court, Charlton County,
Georgia. Waycross Judicial Circuit.

[fols: 320-321] IN THE SUPERIOR COURT OF CHARLTON
COUNTY, GEORGIA

DEFENDANT'S EXHIBIT No. 3

Solicitor General

Waycross Judicial Circuit of Georgia

Douglas, Georgia

April 16, 1964

Dewey Hayes
Solicitor General

Counties:

Bacon, Brantley,
Charlton, Coffee,
Pierce, Ware

Telephones:

Douglas Office 384-3863

Residence 384-2844

Waycross Office AT 3-4163

Mr. Howard Moore, Jr., Attorney
Hollowell, Ward, Moore & Alexander
859½ Hunter Street, N. W.
Atlanta, Georgia

Re: State of Georgia

vs.

Isaac Sims, Jr.

Dear Sir:

I am sending you my personal copy of the evidence in the above case. You may photostat or have a copy of the same made. There will be no charge or cost involved in this transaction.

Please make a copy and return my file within fifteen (15) days, if it is convenient.

Very sincerely, Dewey Hayes, Solicitor General.

DH:mjm

[File is being sent under separate cover.]

cc: Honorable W. H. Duckworth, Chief Justice, Supreme Court of Georgia, Judicial Building, Atlanta, Georgia.

[fol. 322] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA

DEFENDANT'S EXHIBIT No. 4

April 13, 1964

Mr. Dewey Hayes, Solicitor General
Charlton County Superior Court
Douglas, Georgia

Dear Mr. Hayes:

Please forward me a copy of the transcript of the trial proceedings in the case of *State of Georgia vs. Isaac Sims, Jr.*, tried in the Charlton County Superior Court, on or about October 9, 1963, which you exhibited in the Supreme Court of Georgia upon oral argument in the case of *Isaac Sims, Jr. vs. R. P. Balkcom, Jr.*, No. 22438, on Monday, April 13, 1964, and enclose your statement of costs.

With sincerest appreciation for your cooperation, I am

Very truly yours, s/ Howard Moore, Jr.

HM,Jr./1

cc: The Honorable W. H. Duckworth Chief Justice,
Supreme Court of Georgia, Judicial Building, Atlanta,
Georgia 30303. Albert Sidney Johnson, Esquire, Office
of the Attorney General, Judicial Building, Atlanta, Georgia
30303.

[fol. 323] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA

DEFENDANT'S EXHIBIT No. 5

Names put in Grand Jury Box by Jury Revisors August
1, 1960.

- | | |
|------------------------|--------------------------|
| 1. J. C. Adams | 35. T. C. Gowen |
| 2. Loyce Aldridge | 36. J. S. Haddock, Jr. |
| 3. E. F. Allen | 37. W. C. Hall |
| 4. W. R. Allen, Sr. | 38. W. C. Harden |
| 5. O. M. Altman | 39. L. A. Higginbotham |
| 6. S. M. Altman, Jr. | 40. A. J. Hopkins, Jr. |
| 7. Luke C. Andrews | 41. Colquitt D. Hopkins |
| 8. Fred Askew, Jr. | 42. D. Ray James |
| 9. Leon Askew | 43. A. R. Johnson |
| 10. E. M. Batton, Jr. | 44. E. H. Johnson, Jr. |
| 11. George N. Birdsong | 45. H. B. Johnson |
| 12. J. M. Brock | 46. Carl Lane |
| 13. Roy E. Brogdon | 47. M. C. Leslie |
| 14. Walter H. Bruschke | 48. R. E. Lott |
| 15. T. R. Butts | 49. J. L. McKendree |
| 16. Cecil R. Carter | 50. L. D. Majors |
| 17. M. J. Chancey | 51. Richard P. Mays |
| 18. Noah Lee Clark | 52. William Mizell |
| 19. W. F. Clark | 53. O. C. Mizell |
| 20. J. T. Conner | 54. J. B. Moore |
| 21. Z. W. Conner | 55. J. R. Nance |
| 22. J. J. Conner | 56. Rudolph Norwood |
| 23. J. Earl Crews | 57. Verne J. Pickren |
| 24. Julian Crews | 58. W. W. Pickren |
| 25. Frank H. Davis | 59. Donald P. Prescott |
| 26. B. H. Deloach | 60. E. O. Roberson |
| 27. Theo Dinkins | 61. Frank Roddenberry |
| 28. Lee Dixon | 62. J. L. Rowell |
| 29. James L. Eaton | 63. J. W. Shuman |
| 30. M. A. Gay | 64. J. B. Southwell, Jr. |
| 31. Charles H. Gibson | 65. J. B. Southwell, Sr. |
| 32. C. E. Glenn | 66. C. Pearce Stapleton |
| 33. C. C. Gowen | 67. E. B. Stapleton, Jr. |
| 34. S. H. Gowen | 68. E. B. Stapleton, Sr. |

[fols. 324-325]

69. Ivan Steele
70. D. L. Stewart, Sr.
71. L. Jasper Stokes
- ~~72. N. G. Wade, III~~
73. Harold T. White
74. Kenneth Williams
75. Fred C. Woodall
76. Vernon Brock
77. Harry Chesser
78. Glenn Gibson
79. J. D. Hickox
80. J. C. Jones, Sr.
81. T. H. McLean, Sr.
82. R. C. Taylor
83. John A. Barker
84. Harold Crawford
85. Fell Crews
86. Leon Crews
87. Willie Dixon
88. Willie H. Hodges
89. Fed Privett
90. W. R. Simpson
91. Harold Thomas
92. Enoch Burnsed
93. Alton Crawford
94. Clyde Sands
95. Buford Thrift
96. Norman Chesser
97. James B. Coleman
98. Alton Dinkins
99. W. R. Dinkins
100. S. M. Howard
101. Robert N. Staton
102. George W. Crews
103. Wilbur Crews
104. Tom W. Harris
105. J. E. Johns
106. B. M. Prescott, Sr.
107. C. F. Adkins
108. J. J. Johns
109. J. T. O'Quinn
110. M. G. White
111. S. J. Davis, Jr.
112. Sammy Hendrix
113. R. L. Guy
114. M. E. Powell
115. J. M. Jackson
116. G. N. Bryant
117. M. D. Thrift
118. Arthur Carter
119. W. C. Hopkins
120. Thomas H. Crews
121. W. E. Stuckey
122. Jesse Gaskin

[fols. 326-327] IN THE SUPERIOR COURT OF CHARLTON
COUNTY, GEORGIA

DEFENDANT'S EXHIBIT No. 6

- | | |
|------------------------|--------------------------|
| 1. J. C. Adams | 38. T. C. Gowen |
| 2. Loyce Aldridge | 39. J. S. Haddock, Jr. |
| 3. F. F. Allen | 40. W. C. Hall |
| 4. W. R. Allen, Sr. | 41. W. C. Harden |
| 5. O. M. Altman | 42. L. A. Higginbotham |
| 6. S. M. Altman, Jr. | 43. A. J. Hopkins, Jr. |
| 7. Luke C. Andrews | 44. Colquitt D. Hopkins |
| 8. Fred Askew, Jr. | 45. D. Ray James |
| 9. Leon Askew | 46. A. R. Johnson |
| 10. E. M. Batten, Jr. | 47. J. B. Hinson, Sr. |
| 11. George N. Birgsong | 48. J. O. Hannaford, Jr. |
| 12. J. M. Brock | 49. John Harris |
| 13. Roy E. Brogden | 50. E. H. Johnson, Jr. |
| 14. R. W. Bruschke | 51. H. R. Johnson |
| 15. Walter H. Bruschke | 52. Carl Lane |
| 16. T. R. Butts | 53. M. C. Leslie |
| 17. Cecil R. Carter | 54. R. E. Lott |
| 18. M. J. Chancey | 55. J. L. McKendree |
| 19. Noah Lee Clark | 56. L. D. Majors |
| 20. W. F. Clark | 57. Richard P. Mays |
| 21. J. T. Conner | 58. William Mizell |
| 22. Z. W. Conner | 59. O. C. Mizell |
| 23. J. J. Conner | 60. J. B. Moore |
| 24. J. Earl Crews | 61. J. R. Nance |
| 25. Julian Crews | 62. Rudolph Norwood |
| 26. Frank H. Davis | 63. C. L. Passieu |
| 27. B. H. Deloach | 64. C. J. Passieu |
| 28. Theo Dinkins | 65. F. R. Pittman |
| 29. Lee Dixon | 66. Vern J. Pickren |
| 30. James L. Eaton | 67. W. W. Pickren |
| 31. M. A. Gay | 68. Donald P. Prescott |
| 32. E. Clyde Gowen | 69. C. H. Quick |
| 33. Barney B. Gowen | 70. E. O. Roberson |
| 34. Charles H. Gibson | 71. Frank Roddenberry |
| 35. C. F. Glenn | 72. J. L. Rowell |
| 36. C. C. Gowen | 73. J. W. Shuman |
| 37. S. H. Gowen | 74. J. B. Southwell, Jr. |

- 75. J. B. Southwell, Sr.
- 76. C. Pearce Stapleton
- 77. E. B. Stapleton, Jr.
- 78. E. B. Stapleton, Sr.

- 79. Ivan Steele
- 80. D. L. Stewart, Sr.
- 81. Jasper Stokes

[fol. 328] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA

DEFENDANT'S EXHIBIT No. 7

- | | |
|-------------------------------------|------------------------------------|
| 1. J. C. Adams | 38. R. Ward Harrison |
| 2. C. F. Adkins | 39. J. B. Hinson |
| 3. W. R. Allen, Sr. | 40. Mrs. Roberta Hinson |
| 4. Leon Askew | 41. Roy Hodges |
| 5. J. W. Askew | 42. A. J. Hopkins |
| 6. George Birdsong | 43. Colquitt Hopkins |
| 7. George W. Brock | 44. H. E. Huggins |
| 8. R. W. Brusckhe | 45. J. M. Jackson |
| 9. J. R. Calhoun | 46. A. R. Johnson |
| 10. M. J. Chancey | 47. B. S. Johnson |
| 11. J. P. Conner | 48. H. R. Johnson |
| 12. J. T. Conner | 49. J. A. Jones, Sr. |
| 13. J. J. Conner | 50. Mrs. Kathryn Jones |
| 14. Z. W. Conner | 51. M. C. Leslie |
| 15. Hugh Crews | 52. J. L. McKendree |
| 16. J. Earl Crews | 53. L. D. Majors |
| 17. Julian Crews | 54. Richard P. Mays |
| 18. F. H. Davis | 55. Alton Mizell |
| 19. B. Hoyt DeLoach | 56. William Mizell |
| 20. D. R. Dinkins | 57. O. C. Mizell |
| 21. Theo Dinkins | 58. J. B. Moore |
| 22. Lee Dixon | 59. J. R. Nance |
| 23. Ralph Duggan | 60. W. C. Odom |
| 24. Lawrence Flewell | 61. C. L. Passieu |
| 25. Ed Flowers | 62. J. B. Pearce, Sr. |
| 26. Marion P. Gantt | 63. V. J. Pickren |
| 27. M. A. Gay | 64. W. W. Pickren |
| 28. Charles H. Gibson | 65. F. R. Pittman |
| 29. C. E. Glenn | 66. M. E. Powell |
| 30. B. H. Gowen | 67. J. A. Prevatt |
| 31. E. C. Gowen | 68. O. K. Prevatt |
| 32. J. V. Gowen, Jr. | 69. C. O. Raulerson |
| 33. S. H. Gowen | 70. O. E. Raynor |
| 34. T. C. Gowen, Sr. | 71. Mrs. O. E. Raynor |
| 35. R. L. Guy | 72. E. O. Roberson |
| 36. W. C. Hall | 73. J. F. Roddenberry |
| 37. Mrs. Mayme A. Harris | 74. C. D. Sims |

75. J. B. Southwell, Sr.
 76. C. P. Stapleton
 77. E. B. Stapleton, Jr.
 78. E. B. Stapleton, Sr.
 79. D. L. Stewart, Sr.
~~80. Mrs. Noah Stokes~~
 81. L. Jasper Stokes
 [fols. 329-330]
~~82. P. O. Stokes~~
 83. R. B. Stroup
~~84. F. V. Sweet~~
 85. W. D. Thompson
 86. John S. Tyson, Jr.
 87. J. M. Wade
 88. Neil G. Wade, III
 89. D. R. Wainwright
 90. Harold T. White
 91. M. G. White
 92. R. H. Wildes
 93. Kenneth Williams
~~94. C. T. Brock~~
 95. Vernon Brock
 96. Harry Chesser
 97. Glenn Gibson
 98. Albert Gowen
 99. Charlie E. Harden
 100. O. F. Harden
 101. Carl Jones
 102. T. H. McLean, Sr.
~~103. E. Bell, Jr.~~
 104. Harold Crawford
 105. Fell Crews
 106. Leon Crews
 107. Willis A. Hodges
 108. W. C. Hopkins
~~109. Fred F. Osterman~~
 110. Fed Privett
~~111. Charles Raulerson~~
 112. Noah Stokes
 113. T. L. Roddenberry
 114. R. C. Taylor
~~115. F. L. Burnsed~~
 116. Alton Crawford
 117. Clyde Sands
~~118. Alfred Thrift~~
 119. Buford Thrift
 120. Morgan Chesser
 121. James B. Coleman
 122. Basil Crews
 123. Alton Dinkins
 124. W. R. Dinkins
 125. Barney B. Gowen
 126. H. P. McDuffie
 127. Theo Tucker
 128. Kermit Crews
 129. T. W. Harris
 130. J. E. Johns
 131. B. M. Prescott, Sr.

[fol. 331] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA

DEFENDANT'S EXHIBIT No. 8

- | | |
|-------------------------|-------------------------|
| 1. J. C. Adams | 38. G. C. Knabb |
| 2. Leon Askew | 39. Clyde Sands |
| 3. George W. Brock | 40. A. L. Thrift |
| 4. R. W. Brusckhe | 41. Alfred Thrift |
| 5. J. J. Conner | 42. Morgan Chesser |
| 6. Z. W. Conner | 43. James B. Coleman |
| 7. Hugh Crews | 44. J. P. Conner |
| 8. Julian Crews | 45. Basil Crews |
| 9. F. H. Davis | 46. Alton Dinkins |
| 10. D. R. Dinkins | 47. W. R. Dinkins |
| 11. Theo Dinkins | 48. S. M. Howard |
| 12. Lawrence R. Flewell | 49. J. E. Johns |
| 13. Charles H. Gibson | 50. B. M. Prescott |
| 14. W. E. Gibson | 51. A. J. Hopkins |
| 15. B. H. Gowen | 52. Colquitt Hopkins |
| 16. T. C. Gowen | 53. H. E. Huggins |
| 17. Harold S. Gowen | 54. J. M. Jackson |
| 18. R. L. Guy | 55. A. R. Johnson |
| 19. John Harris | 56. B. S. Johnson |
| 20. R. Ward Harrison | 57. E. H. Johnson, Jr. |
| 21. J. B. Hinson | 58. E. H. Johnson, Sr. |
| 22. Mrs. J. B. Hinson | 59. H. R. Johnson |
| 23. Glenn Gibson | 60. M. C. Leslie |
| 24. John A. Barker, Sr. | 61. J. L. McKendree |
| 25. Ernie A. Bell, Jr. | 62. L. D. Majors |
| 26. Fell Crews | 63. R. P. Mays |
| 27. Leon Crews | 64. Alton M. Mizell |
| 28. Ernie Dixon | 65. William Mizell, Jr. |
| 29. Willie Dixon | 66. O. C. Mizell |
| 30. Willie H. Hodges | 67. Rudolph Norwood |
| 31. W. E. Renshaw | 68. C. J. Passieu |
| 32. W. C. Suggs | 69. C. L. Passieu |
| 33. Enoch J. Burnsed | 70. V. J. Pickren |
| 34. F. L. Burnsed | 71. W. W. Pickren |
| 35. Alton Crawford | 72. F. R. Pittman |
| 36. Ottis Crews | 73. M. E. Powell |
| 37. Earl Davis | 74. J. A. Prevatt |

[fols. 332-333]

- 75. E. O. Roberson
- 76. J. F. Roddenberry
- 77. J. B. Southwell, Sr.
- 78. J. B. Southwell, Jr.
- 79. C. P. Stapleton
- 80. E. C. Stapleton, Sr.
- 81. L. J. Stokes
- 82. R. B. Stroup

- 83. F. V. Sweat
- 84. Malcolme Wade
- 85. M. G. White
- 86. Harold T. White
- 87. T. G. Brock
- 88. Vernon Brock
- 89. Harry Chessser, Jr.
- 90. A. G. Gowen

[fol. 334] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA

DEFENDANT'S EXHIBIT No. 9

- | | |
|------------------------|--------------------------|
| 1. J. C. Adams | 38. A. J. Hopkins, Jr. |
| 2. C. F. Adkins | 39. H. E. Huggins |
| 3. E. F. Allen | 40. J. M. Jackson |
| 4. W. R. Allen, Jr. | 41. A. R. Johnson |
| 5. James W. Altman | 42. B. S. Johnson |
| 6. S. M. Altman, Jr. | 43. H. R. Johnson |
| 7. Leon Askew | 44. E. H. Johnson |
| 8. R. H. Bragg | 45. Roswald Johnson |
| 9. G. W. Brock | 46. J. Ardell Jones |
| 10. R. W. Bruschke | 47. Troy Jones |
| 11. H. D. Chastain | 48. M. C. Leslie |
| 12. George M. Coleman | 49. E. R. Lott |
| 13. Z. W. Conner | 50. L. D. Majors |
| 14. Hugh Crews | 51. Richard P. Mays |
| 15. J. Elbert Crews | 52. Alton M. Mizell |
| 16. J. Marshal Crews | 53. John D. McCoy |
| 17. Julian Crews | 54. J. L. McKendree |
| 18. Frank Davis | 55. Rudolph Norwood |
| 19. B. H. DeLoach | 56. W. C. Odom |
| 20. D. R. Dinkins | 57. C. L. Passieu |
| 21. Lee Dixon | 58. J. B. Pearce, Sr. |
| 22. Ralph Duggan | 59. M. E. Powell |
| 23. James L. Eaton | 60. Donald Prescott |
| 24. Lawrence Flewell | 61. Mersal Prescott |
| 25. M. P. Gantt | 62. W. H. Prescott |
| 26. Charles H. Gibson | 63. J. A. Prevatt |
| 27. C. E. Glenn | 64. C. O. Raulerson |
| 28. B. H. Gowen | 65. J. F. Roddenberry |
| 29. T. C. Gowen | 66. Ben Rodgers |
| 30. E. C. Gowen | 67. C. D. Simms |
| 31. J. V. Gowen, Jr. | 68. Benny Smith |
| 32. S. Harold Gowen | 69. J. B. Southwell, Jr. |
| 33. Lonnie Guinn | 70. J. B. Southwell, Sr. |
| 34. R. L. Guy | 71. E. B. Stapleton, Jr. |
| 35. L. A. Higginbotham | 72. E. B. Stapleton, Sr. |
| 36. J. B. Hinson | 73. C. P. Stapleton |
| 37. Roy Hodges | 74. D. L. Stewart, Sr. |

75. Jasper Stokes
 76. P. O. Stokes
 [fols. 335-336]
 77. R. B. Stroup
 78. M. D. Thrift
 79. John S. Tyson, Jr.
 80. J. M. Wade
 81. L. I. Wade
 82. Neill G. Wade, III
 83. D. R. Wainwright
 84. M. G. White
 85. Harold T. White
 86. Tom Brock
 87. Vernon Brock
 88. Willie Dixon
 89. Brantley Gay
 90. S. G. Gibson
 91. Glenn Gibson
 92. Lewis Harden
 93. O. F. Harden
 94. Charlie E. Harden
 95. Julian Huggins
 96. Carl Jones
 97. T. L. Roddenberry
 98. R. C. Taylor
 99. Harold Crawford
 100. Fell Crews
 101. Charlie Hodges
 102. Willie H. Hodges
 103. Wm. A. Norman
 104. Fred F. Osterman
 105. Rudy R. Raulerson
 106. Noah Stokes
 107. Benton Thompson
 108. R. L. Canaday
 109. Geo. W. Chism
 110. Douglas Raulerson
 111. Clyde Sands
 112. A. L. Thrift
 113. Buford Thrift
 114. Arthur Carter
 115. Morgan Chesser 1
 116. James P. Coleman 3
 117. J. P. Conner
 118. Basil Crews 1
 119. Buster Crews 1
 120. Oscar L. Crews 3
 121. W. R. Dinkins 1
 122. S. M. Howard
 123. H. P. McDuffie 1
 124. J. A. Stanfield
 125. Robert N. Staton
 126. Jimmy Todd 1
 127. Sammy Hendrix
 128. J. E. Johns
 129. B. M. Prescott
 130. William M. Prescott

[fol. 337] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA

DEFENDANT'S EXHIBIT No. 10

The following names were placed in the Grand Jury box.

- | | |
|--------------------------|-------------------------|
| 1. J. C. Adams | 36. E. Clyde Gowen |
| 2. C. F. Adkins | 37. S. H. Gowen |
| 3. F. F. Allen | 38. T. C. Gowen |
| 4. Estes E. Altman | 39. Harold Guinn |
| 5. Fred Askew, Jr. | 40. R. L. Guy |
| 6. Leon Askew | 41. J. S. Haddock |
| 7. Luke C. Andrews | 42. W. C. Hall |
| 8. George N. Birdsong | 43. Robert F. Hill |
| 9. R. H. Bragg, Sr. | 44. Colquitt D. Hopkins |
| 10. Roy F. Brogden | 45. Ernest V. Horne |
| 11. J. M. Brock | 46. H. E. Huggins |
| 12. R. W. Bruschke | 47. Joseph M. Jackson |
| 13. W. F. Clark | 48. D. Ray James |
| 14. J. J. Conner | 49. A. R. Johnson |
| 15. J. T. Conner | 50. E. H. Johnson, Jr. |
| 16. J. P. Conner | 51. H. R. Johnson |
| 17. Z. W. Conner | 52. J. C. Jones, Jr. |
| 18. Robert L. Corley | 53. Virgil Kelly |
| 19. Hugh Crews | 54. Carl Lane |
| 20. J. M. Crews | 55. Ben H. Lee |
| 21. J. Earl Crews | 56. E. R. Lott |
| 22. Julian Crews | 57. Richard P. Mays |
| 23. Oscar E. Crews | 58. Alton M. Mizell |
| 24. Alvin Davis | 59. Wm. Mizell, Jr. |
| 25. Frank H. Davis | 60. J. B. Moore |
| 26. B. Hoyt DeLoach | 61. J. R. Nance |
| 27. Theo Dinkins | 62. Rudolph Norwood |
| 28. Lee Dixon | 63. W. C. Odom |
| 29. Ralph J. Duggan, Sr. | 64. C. W. Parnell |
| 30. B. E. Duke | 65. C. J. Passieu |
| 31. T. W. Edge | 66. W. W. Pickren |
| 32. J. N. Elder | 67. F. R. Pittman, Sr. |
| 33. Doc Evans | 68. O. K. Prevatt |
| 34. Charles H. Gibson | 69. H. K. Ridgon |
| 35. B. H. Gowen | 70. W. W. Roberts |

71. J. Frank Roddenberry
72. Ira L. Rogers, Sr.
73. B. L. Shivar
74. John H. Shuman
75. J. W. Shuman
76. Mahlon Smith
77. J. B. Southwell, Sr.
78. E. R. Stapleton, Jr.
79. E. B. Stapleton, Sr.
80. C. P. Stapleton
81. Ican Steele
82. D. L. Stewart, Sr.
83. L. Jasper Stokes
84. P. O. Stokes
85. Dr. J. S. Taylor
86. W. L. Thomas, Sr.
87. W. D. Thompson
88. John S. Tyson, Jr.
89. G. W. White
90. Harold T. White
91. M. G. White
92. Kenneth Williams
93. Fred C. Woodall
94. Vernon Brock
95. G. N. Bryant
96. Harry Chesser
97. Glen Gibson
98. A. G. Gowen
99. Albert Gowen
100. J. C. Jones, Sr.
101. Clarence O'Quinn
102. Tommy Roddenberry
103. R. C. Taylor
104. W. D. Bell
105. George E. Bell
106. Lacy Conner
107. L. F. Crawford
108. Harold Crawford
109. Fell Crews
110. Leon Crews
111. Willie Dixon
112. R. B. Griner
113. Edward Hickox
114. Grover Hodges
115. Willie H. Hodges
116. Fed Privett
117. Noah Stokes
118. F. L. Burnsed
119. R. L. Canady
120. George W. Chism
121. Alton Crawford
122. Earl Davis
123. Clyde Sands
124. Aaron Thrift
125. Buford Thrift
126. Alton Dinkins
127. W. R. Dinkins
128. Barney B. Gowen
129. N. A. Griffin
130. H. P. McDuffie
131. Robert N. Staton
132. James C. Todd
133. Jimmy Todd
134. Wilbur Crews
135. Tom W. Harris
136. J. E. Johns
137. J. J. Johns
138. B. M. Prescott, Sr.
139. M. D. Thrift
140. L. C. Black
141. Arthur Carter
142. J. Elvin Carter
143. Matthew Carter
144. Morgan Chesser
145. James B. Coleman
146. A. D. Crews
147. Kenneth M. Crews
148. Herbert Crews
149. Leonard Crews
150. Lewis Crews
151. Riley Crews

[fol. 338] STATE OF GEORGIA,
County of Charlton:

I, the undersigned, hereby certify that the foregoing page is a true and correct copy of the Grand Jury list as it was revised by the jury commissioners on September 26, 1962 and appears of record in this the office of the Clerk of Superior Court, Charlton County, Georgia in Minute Book "H", page 173.

Witness my hand and the official seal of this court this the 14th day of December, 1963.

Clyde Woolard, Clerk of Superior Court, Charlton
County, Folkston, Georgia.

[fol. 339] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA

DEFENDANT'S EXHIBIT No. 11

- | | |
|-----------------------|----------------------------|
| 1. J. C. Adams 1 | 38. Z. W. Conner 119 |
| 2. C. F. Adkins 2 | 39. Robert L. Corley |
| 3. Loyce Adridge | 40. Hugh Crews 12 |
| 4. E. F. Allen | 41. Ivey B. Crews (Buck) |
| 5. Homer Allen | 42. J. Earl Crews 13 |
| 6. W. R. Allen, Sr. 3 | 43. J. Elbert Crews |
| 7. W. R. Allen, Jr. | 44. Julian Crews 14 |
| 8. James Altman | 45. Julian L. Crews |
| 9. S. M. Altman, Jr. | 46. M. J. Crews |
| 10. Luke C. Andrews | 47. Nathan Crews |
| 11. Gene Paul Askew | 48. Walter B. Crews |
| 12. Fred Askew, Jr. | 49. F. H. Davis (Frank) 15 |
| 13. Leon Askew 4 | 50. S. J. Davis, Jr. |
| 14. J. W. Askew 1 | 51. B. Hoyt DeLoach 119 |
| 15. J. H. Barfield | 52. D. R. Dinking 118 |
| 16. E. M. Batton, Jr. | 53. Dan R. Dinkins, Jr. |
| 17. George Birdsong 5 | 54. Dell Dinkins |
| 18. R. H. Bragg | 55. Theo Dinkins 16 |
| 19. J. M. Brock | 56. Lee Dixon 17 |
| 20. George W. Brock 6 | 57. Ralph Duggan 18 |
| 21. Roy Brogdon | 58. James L. Eaton |
| 22. R. W. Bruschke 7 | 59. J. N. Elders |
| 23. Walter Bruschke | 60. L. C. Elkins |
| 24. Bailey Bryant | |
| 25. Pasco Bryant | [fol. 340] |
| 26. Robert T. Bryant | 61. J. L. Eunice, Sr. |
| 27. T. R. Butts | 62. Lawrence R. Flewell |
| 28. J. R. Calhoun 8 | 19 |
| 29. Cecil R. Carter | 63. Ed Flowers 20 |
| 30. Clarence Carter | 64. Marion P. Gantt 21 |
| 31. M. J. Chancey 9 | 65. M. A. Gay 22 |
| 32. Norman Chesser | 66. Charles H. Gibson 23 |
| 33. W. F. Clark | 67. Ray Gibson |
| 34. George M. Coleman | 68. W. E. Gibson |
| 35. J. P. Conner 10 | 69. A. L. Gillis |
| 36. J. T. Conner 11 | 70. C. E. Glenn 24 |
| 37. J. J. Conner 120 | 71. B. H. Gowen 112 |

- | | |
|-----------------------------|-----------------------------|
| 72. Clifton C. Gowen | 110. Horace Knight |
| 73. E. C. Gowen 25 | 111. Carl Lane |
| 74. Ferris D. Gowen | 112. Vernon Lee |
| 75. G. R. Gowen, III | 113. M. C. Leslie 39 |
| 76. J. V. Gowen, Jr. 111 | 114. Demery Lloyd |
| 77. S. H. Gowen 26 | 115. E. R. Lott |
| 78. T. C. Gowen, Jr. | 116. Robert McCoy |
| 79. T. C. Gowen, Sr. 27 | 117. John D. McCoy |
| 80. R. W. Gowen | 118. J. L. McKendree 40 |
| 81. Harold Lee Guinn | 119. Mrs. J. L. McKendree |
| 82. R. L. Guy 28 | 120. L. D. Majors 117 |
| 83. J. S. Haddock, Jr. | [fol. 341] |
| 84. W. C. Hall 113 | 121. Jack R. Mays |
| 85. J. O. Hannaford, Jr. | 122. Richard P. Mays 41 |
| 86. W. C. Harden | 123. Mrs. Charles R. Miller |
| 87. Mrs. Mayme A. Harris 32 | 124. Alton Mizell 42 |
| 88. R. Ward Harrison 29 | 125. Harold Mizell |
| 89. L. A. Higginbotham | 126. William Mizell |
| 90. J. B. Hinson 30 | 127. Mr. Iva D. Mizell |
| 91. Mrs. Roberta Hinan 31 | 128. O. C. Mizell |
| 92. Roy Hodges 114 | 129. Truitt Mizell |
| 93. A. J. Hopkins 32 | 130. J. B. Moore 45 |
| 94. Colquitt Hopkins 115 | 131. Colonel Morgan |
| 95. H. E. Huggins 116 | 132. Francis Murray |
| 96. Juanita A. Higgins | 133. J. C. Murray |
| 97. Herbert Huling | 134. J. R. Nance 46 |
| 98. J. M. Jackson 33 | 135. John E. Norris |
| 99. D. Ray James | 136. Rudolph Norwood |
| 100. A. R. Johnson 24 | 137. J. F. O'Berry |
| 101. B. S. Johnson 35 | 138. Roy O'Berry |
| 102. E. H. Johnson, Jr. | 139. W. C. Odom 5 |
| 103. H. R. Johnson 36 | 140. C. L. Passieu 47 |
| 104. R. K. Johnson | 141. C. J. Passieu |
| 105. J. A. Jones, Sr. 37 | 142. J. B. Pearce, Sr. 48 |
| 106. J. A. Jones, Sr. | 143. Oscar Petty |
| 107. J. C. Jones, Jr. | 144. V. J. Pickren 49 |
| 108. | 145. S. L. Pickren |
| 109. | 146. W. W. Pickren 50 |
| 108. Mr. Kathryn Jones 38 | 147. F. R. Pittman 51 |
| 109. Virgil Kelley | 148. John W. Poulson |
| | 149. M. E. Powell 52 |

- | | |
|---------------------------------|----------------------------|
| 150. Donald Prescott | 189. Neil G. Wade, III 73 |
| 151. J. A. Prevatt 53 | 190. Virginia S. Wade |
| 152. O. K. Prevatt 54 | 191. D. R. Wainwright 74 |
| 153. C. O. Raulerson 55 | 192. Kenneth Wainwright |
| 154. O. E. Raynor 56 | 193. G. W. White |
| 155. Mrs. O. E. Raynor 57 | 194. Harold T. White 75 |
| 156. H. K. Rigdon | 195. M. G. White 96 |
| 157. W. W. Roberts | 197. R. H. Wildes 77 |
| 158. E. O. Roberson 58 | 197. Larry Williamson |
| 159. Fred M. Roberson | 198. Kenneth Williams 2 |
| 160. J. Frank Roddenberry
59 | 199. H. G. Willingham |
| 161. Ira Rogers, Sr. | 200. A. E. Willingham |
| 162. J. L. Rowell | 201. C. L. Zipperer |
| 163. B. L. Shivar | 200. G. T. Brock 78 |
| 164. John H. Shuman | 201. Vernon Brock 79 |
| 165. J. W. Shuman | 202. James I. Bryant |
| 166. C. D. Sims 60 | 203. Harry Chesser 3 |
| 167. Bennie Smith | 204. G. N. Bryant |
| 168. Mahlon Smith | 205. Willie M. Chesser |
| 169. J. B. Southwell, Jr. | 206. Willie Dixon |
| 170. J. B. Southwell, Sr. 61 | 207. Earnie Dixon — |
| 171. Avery C. Spell | 208. Roland Dixon |
| 172. C. Pearce Stapleton 62 | 209. Albert F. Gay |
| 173. E. B. Stapleton, Jr. 63 | 210. J. B. Gay — |
| 174. E. B. Stapleton, Sr. 64 | 211. Glenn Gibson 80 |
| 175. Ivan Steele | 212. A. G. Gowen |
| 176. D. L. Stewart, Sr. 65 | 213. B. G. Gibson |
| 177. Mrs. Noah Stokes 68 | 214. Albert Gowen 81 |
| 178. L. Jasper Stokes 66 | 215. Charlie E. Harden 4 |
| 179. P. O. Stokes | 216. Lewis Harden |
| 180. R. B. Stroup 67 | 217. O. F. Harden 82 |
| [fol. 342] | 218. J. D. Hickox (Hickox) |
| 181. F. V. Sweat (Speck) 69 | 219. Carl Jones 83 |
| 182. Dr. J. S. Taylor | 220. T. H. McLean, Sr. 110 |
| 183. W. D. Thompson 70 | 221. John A. Barker |
| 184. Cleo H. Turner | 222. E. Bell, Jr. 6 |
| 185. John S. Tyson, Jr. 71 | 223. Lacy Conner |
| 186. Jack Wade | 224. Harold Crawford 84 |
| 187. J. M. Wade 72 | 225. Champ Crews |
| 188. Lewis I. Wade | 226. Clarence H. Crews |
| | 227. Fell Crews |
| | 228. Henry Crews |

229. Leon Crews
 230. John T. Fox
 231. Edward Hickox
 232. C. L. Hodges
 233. Willis A. Hodges 86
 234. Willie H. Hodges
 235. W. H. Hopkins 87
 236. Oscar H. Leckie
 [fol. 343]
 237. Fred F. Osterman 90
 238. Yulle Privett
 239. Fed Privett 91
 240. Charles Raulerson 92
 241. Rudy R. Raulerson
 242. W. E. Renshaw
 243. Mrs. W. R. Simpson
 244. Noah Stokes 93
 245. W. C. Suggs
 246. W. R. Sutton
 247. Harold Thomas
~~248. Bruce L. Thomas~~
 248. F. L. Murray
 249. T. H. McLean
 250. Clarence O'Quinn
 251. Royal Petty
 252. N. W. Roddenberry
 253. T. L. Roddenberry 94
 254. Roy A. Taylor
 255. B. C. Taylor
 256. Francis Turner
 257. Enoch Burnsed
 258. F. L. Burnsed 96
 259. George W. Chism
 260. John D. Crawford
 261. Alton Crawford 97
 262. Wallace Hodges
 263. Cecil Raulerson
 Farley Burnsed Jr.
 264. Clyde Sands 98
 265. Alfred Thrift 99
 266. A. L. Thrift
 267. Buford Thrift 100
 268. L. C. Black
 269. Victor Brooks
 270. Alton Carter
 271. Arthur Carter
 272. Morgan Chessser 101
 273. James B. Coleman 102
 274. Basil Crews 103
 275. Alton Dinkins 104
 276. W. R. Dinkins 105
 277. Mrs. B. B. Gowen
 278. Barney B. Gowen 106
 279. N. A. Griffin
 280. Jesse M. Hilton
 281. S. M. Howard
 282. H. P. McDuffie 118
 283. Robert M. Staton
 284. Jimmie Todd
 285. Theo Tucker 107
 286. Kermit Crews 108
 287. Jesse A. Crews
 288. George W. Crews
 289. Hershel Crews
 290. Wilbur Crews
 291. T. W. Harris 109
 [fols. 344-345]
 292. Sammy Hendrix
 293. J. E. Johns 88
 294. B. M. Prescott, Jr.
 295. B. M. Prescott, Sr. 89
 296. Lee R. Prescott
 297. J. D. O'Quinn
 298. Lawrence Allen
 299. Hiram Altman
 300. Leon Bailey
 301. James Lamar Casey
 302. Robert A. Chessser, Jr.
 303. Mose Crews, Jr.
 304. Alvin Davis
 305. Eugene Davis
 306. Lewis M. Davis

307. Dock Evans
308. Lonnie Guinn
309. B. H. Lee
310. Peter McNeil
311. O. L. Nobles
312. Scott Petty
313. Eaton Prescott
314. Mersal Prescott
315. James Riggins

316. J. V. Shipes
317. W. R. Steedley
318. W. E. Stuckey
319. A. L. Taylor
320. W. L. Thomas, Sr.
321. Dayton Woodard
322. Raiford Woolard
Wallace Hodge
Farley Burnsed, Jr.

[fol. 346] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA

DEFENDANT'S EXHIBIT No. 12

- | | |
|------------------------|----------------------------|
| 1. J. C. Adams ✓ | 38. Mose Crews |
| 2. L. C. Addridge | 39. J. Melton Crews |
| 3. C. F. Adkins | 40. M. J. Crews |
| 4. E. F. Allen | 41. Nathan Crews |
| 5. W. R. Allen, Jr. | 42. Thomas H. Crews |
| 6. Hiram Altman | 43. Eugene Davis |
| 7. James Altman | 44. F. H. Davis ✓ |
| 8. S. M. Altman, Sr. | 45. D. R. Dinkins ✓ |
| 9. S. M. Altman, Jr. | 46. Theo Dinkins ✓ |
| 10. Luke Andrews | 47. Lee Dixon |
| 11. Gene Paul Askew | 48. Ralph Duggan |
| 12. Fred Askew, Jr. | 49. T. W. Edge |
| 13. Leon Askew ✓ | 50. Dock Evans |
| 14. James Eaton | 51. J. N. Elder |
| 15. Ralph Belcher | 52. Lawrence R. Flewell ✓ |
| 16. George Birdsong | 53. E. D. Flowers |
| 17. R. H. Bragg | 54. Jim Gantt |
| 18. J. H. Brock | 55. Marion P. Gantt |
| 19. George W. Brock ✓ | 56. Albert F. Gay |
| 20. Walter Bruechke | 57. M. A. Gay |
| 21. R. W. Bruechke ✓ | 58. Charles H. Gibson ✓ |
| 22. Bailey Bryant | 59. [Copy Illegible] ✓ |
| 23. F. R. Capps | 60. Carl E. Glenn |
| 24. Carter Clarence | 61. B. H. Gowen ✓ |
| 25. L. C. Carnathan | 62. C. C. Gowen |
| 26. Cecil R. Carter | 63. T. C. Gowen ✓ |
| 27. M. J. Chancey | 64. Harold S. Gowen ✓ |
| 28. Harry Chesser, Jr. | 65. Harold Guinn |
| 29. W. F. Clark | 66. Lonnie Guinn |
| 30. J. J. Conner ✓ | 67. R. L. Guy ✓ |
| 31. Z. W. Conner ✓ | 68. J. S. Haddock, Jr. |
| 32. Robert L. Cooley | 69. J. O. Hannaford, Jr. |
| 33. Erving Crews | 70. W. C. Harden |
| 34. Hugh Crews ✓ | 71. John Harris ✓ |
| 35. Earl J. Crews | 72. R. Ward Harrison ✓ |
| 36. Elbert Crews | 73. Dennis L. Higginbotham |
| 37. Julian Crews ✓ | 74. L. A. Higginbotham |

- 75. J. B. Hinson ✓
- 76. Mrs. J. B. Hinson
- 77. Roy Hodge
- 78. Joseph T. Holt

[fol. 347]

- 79. A. J. Hopkins ✓
- 80. Colquitt Hopkins ✓
- 81. H. E. Huggins ✓
- 82. J. M. Jackson ✓
- 83. A. R. Johnson ✓
- 84. B. S. Johnson ✓
- 85. E. H. Johnson, Jr. ✓
- 86. E. H. Johnson, Sr. ✓
- 87. H. R. Johnson ✓
- 88. R. K. Johnson
- 89. J. A. Jones
- 90. Robert C. Lanigan
- 91. M. C. Leslie ✓
- 92. Demery Lloyd
- 93. E. R. Lott
- 94. John D. McCoy
- 95. J. L. McKendree ✓
- 96. L. D. Majors ✓
- 97. J. R. Mays
- 98. R. P. Mays ✓
- 99. Alton M. Mizell ✓
- 100. Harold Mizell
- 101. Wm. Mizell, Jr. ✓
- 102. O. C. Mizell ✓
- 103. Colonel Morgan
- 104. Rudolph Norwood ✓
- 105. Johnny Norris
- 106. C. J. Passieu ✓
- 107. C. L. Passieu ✓
- 108. J. B. Pearce, Sr.
- 109. V. J. Pickren ✓
- 110. Samuel L. Pickren
- 111. W. W. Pickren ✓
- 112. F. R. Pittman ✓
- 113. M. E. Powell ✓
- 114. Donald Prescott
- 115. Mersal Prescott
- 116. W. H. Prescott
- 117. J. A. Prevatt ✓
- 118. O. E. Raynor
- 119. H. K. Rigdon
- 120. W. W. Roberts
- 121. E. O. Roberson ✓
- 122. J. F. Roddenberry ✓
- 123. Ben Rodgers
- 124. J. W. Shuman
- 125. C. D. Sims
- 126. Mahlon Smith
- 127. J. B. Southwell, Sr. ✓
- 128. J. B. Southwell, Jr. ✓
- 129. C. P. Stapleton ✓
- 130. E. B. Stapleton, Jr.
- 131. E. B. Stapleton, Sr. ✓
- 132. D. L. Stewart
- 133. L. E. Stokes
- 134. L. J. Stokes ✓
- 135. R. B. Stroup ✓
- 136. F. V. Sweat ✓
- 137. Lewis Wade
- 138. Neil Wade
- 139. Malcolme Wade ✓
- 140. Jack Wade
- 141. D. R. Wainwright
- 142. M. G. White ✓
- 143. Harold T. White ✓
- 144. G. W. White
- 145. Arliss E. Willingham
- 146. E. M. Wright
- 147. C. L. Zipperer
- 148. Miss Annette Brock
- 149. T. G. Brock ✓
- 150. Vernon Brock ✓
- 151. Harry Chosser, Sr. ✓
- 152. Roland Dixon
- 153. J. B. Gay
- 154. A. G. Gowen ✓

[fols. 348-349]

- | | |
|----------------------------|-------------------------|
| 155. Glenn Gibson ✓ | 192. Ottis Crews ✓ |
| 156. S. G. Gibson | 193. L. L. Crews |
| 157. Charles E. Harden | 193. Fred F. Osterman |
| 158. O. F. Harden | 194. Earl Davis ✓ |
| 159. J. D. Hickox | 195. Raiford Gainey |
| 160. Julian Huggins | 196. Edward W. Hodges |
| 161. Carol Jones | 197. G. C. Knabb ✓ |
| (Carl Jones) | 198. N. J. Raulerson |
| 162. T. H. McLean | 199. Clyde Sands ✓ |
| 163. T. L. Roddenberry | 200. A. L. Thrift ✓ |
| 164. R. C. Taylor | 201. Alfred Thrift ✓ |
| 165. John A. Barker, Sr. ✓ | 202. Buford Thrift |
| 166. R. F. Beard | 203. Morgan Chessner ✓ |
| 167. Ernie A. Bell, Jr. ✓ | 204. James B. Coleman ✓ |
| 168. David Burdett | 205. J. P. Conner ✓ |
| 169. Doyle Canaday, Mrs. | 206. Basil Crews ✓ |
| 170. Earl Crawford | 207. Hilton Crews |
| 171. Thelma Crawford | 208. Alton Dinkins ✓ |
| 172. Champ Crews | 209. W. R. Dinkins ✓ |
| 173. Fell Crews ✓ | 210. Barney B. Gowen |
| 174. Leon Crews ✓ | 211. Ferris Gowen |
| 175. Ernie Dixon ✓ | 212. J. O. Howard |
| 176. Willie Dixon ✓ | 213. S. M. Howard ✓ |
| 177. W. A. Hodges | 214. H. P. McDuffie |
| 178. Willie H. Hodges ✓ | 215. Robert N. Staton |
| 179. W. C. Hopkins | 216. Theo Tucker |
| 180. Oscar Leckie | 217. Wilbur Crews |
| 181. Fed Privitt | 218. Sammy Hendricks |
| 182. W. E. Renshaw | 219. J. E. Johns ✓ |
| 183. Noah Stokes | 220. B. M. Prescott ✓ |
| 184. W. C. Snags ✓ | 221. Eston Prescott |
| 185. Venton Thompson | 222. Lee Prescott |
| 186. Enoch J. Burnsed ✓ | 223. Ivory Alberti |
| 187. F. L. Burnsed ✓ | 224. Charlie Bailey |
| 188. R. L. Canaday | 225. Henry Leo. Bailey |
| 189. Alton Crawford ✓ | 226. Ed Brown |
| 190. John D. Crawford | 227. Herman Everett |
| 191. Oliver D. Crews | 228. Sam Hannan |
| | 229. T. L. Jones |

[fol. 350] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA

DEFENDANT'S EXHIBIT No. 13

List of Traverse Jurors drawn by Jury Commissioners,
Aug. 9, 1954

- | | |
|-----------------------|--------------------------|
| 1. J. C. Adams | 35. Clarence Carter |
| 2. C. F. Adkins | 36. M. J. Chancey |
| 3. E. C. Aldridge | 37. H. D. Chastain |
| 4. Doyce Aldridge | 38. Harry Chesser, Jr. |
| 5. Mrs. E. F. Allen | 39. Noah Lee Clark |
| 6. E. F. Allen | 40. W. F. Clark |
| 7. W. R. Allen, Jr. | 41. George M. Coleman |
| 8. Hiram Altman | 42. J. J. Conner |
| 9. James W. Altman | 43. Z. W. Conner |
| 10. O. M. Altman | 44. E. L. Craft |
| 11. S. M. Altman, Sr. | 45. Erving Crews |
| 12. S. M. Altman, Jr. | 46. Hugh Crews |
| 13. Luke C. Andrews | 47. Ira Crews |
| 14. Leon Askew | 48. Ivey B. Crews |
| 15. Fred Askew, Jr. | 49. Earl J. Crews |
| 16. E. M. Batton | 50. J. Elbert Crews |
| 17. E. M. Batton, Jr. | 51. J. Marshal Crews |
| 18. Ralph Belcher | 52. Jimmy H. Crews |
| 19. George Birdsong | 53. Julian Crews |
| 20. L. C. Black | 54. J. Melton Crews |
| 21. R. A. Boyd | 55. J. M. Crews |
| 22. John W. Burch | 56. Mose Crews, Jr. |
| 23. Albert Brantley | 57. Nathan A. Crews |
| 24. B. H. Bragg | 58. Thomas H. Crews |
| 25. G. W. Brock | 59. W. R. Crews |
| 26. Mrs. J. H. Brown | 60. Frank Davis |
| 27. R. W. Brusckke | 61. S. J. Davis, Sr. |
| 28. Richard Brusckke | 62. S. J. Davis, Jr. |
| 29. Bailey Bryant | 63. B. H. DeLoach |
| 30. J. W. Bryant | 64. D. R. Dinkins |
| 31. Pasco Bryant | 65. E. L. Dinkins |
| 32. B. E. Canaday | 66. Lee Dixon |
| 33. Bud Cantrell | 67. Roland Dixon |
| 34. Cecil B. Carter | 68. John R. Dominey, Jr. |

- | | |
|-------------------------------------|----------------------------|
| 69. B. E. Duke | 110. J. O. Howard |
| 70. Ralph Duggan | 111. H. E. Huggins |
| 71. James L. Eaton | 112. Herbert Huling |
| 72. O. E. Edenfield | 113. J. M. Jackson |
| 73. T. W. Edge | 114. A. R. Johnson |
| 74. J. N. Elder | 115. B. S. Johnson |
| 75. L. C. Elkins | 116. Gertrude W. Johnson |
| 76. J. L. Eunice | 117. H. R. Johnson |
| 77. Dock Evans | 118. E. H. Johnson |
| 78. Lawrence Flewell | 119. Roswald Johnson |
| 79. J. A. Gantt | 120. J. Ardell Jones |
| 80. M. P. Gantt | 121. Troy Jones |
| 81. M. A. Gay | 122. S. F. Kennison |
| 82. Charles H. Gibson | 123. Thomas Knowles |
| 83. W. E. Gibson | 124. E. R. Kurfees |
| 84. C. E. Glenn | 125. Carl Lane |
| 85. Clifton Gowen | 126. B. H. Lee |
| 86. B. H. Gowen | 127. C. S. Lentz |
| 87. T. C. Gowen | 128. M. C. Leslie |
| 88. E. C. Gowen | 129. Demery Lloyd |
| 89. J. V. Gowen, Jr. | 130. E. R. Lott |
| 90. S. Harold Gowen | 131. L. D. Majors |
| 91. Harold Lee Guinn | 132. Jack R. Mays |
| 92. Lonnie Guinn | 133. Richard P. Mays |
| 93. Mannie T. Guy | 134. Alton M. Mizell |
| 94. R. L. Guy | 135. Harold Mizell |
| 95. Mrs. W. G. Guthrie | 136. Wm. Mizell |
| 96. J. S. Haddock | 137. O. C. Mizell |
| 97. J. O. Hannaford, Jr. | 138. O. C. Mizell |
| 98. W. C. Harden | 139. J. B. Moore |
| 99. W. H. Harden | 140. Colonel Morgan |
| 100. John Harris | 141. J. C. Murray |
| 101. Mrs. Gazelle Harrison | 142. E. E. McClung |
| 102. E. J. Herrin | 143. W. R. McCoy |
| 103. L. A. Higginbotham | 144. John D. McCoy |
| 104. Miss Dora Nell
Higginbotham | 145. J. L. McKendree |
| 105. Mrs. Roberta Hinson | 146. Miss Edwina Nelms |
| 106. J. B. Hinson | 147. Rudolph Norwood |
| 107. Roy Hodges | 148. J. F. O'Berry |
| 108. A. J. Hopkins, Jr. | 149. Roy O'Berry |
| 109. Colquitt Hopkins | 150. W. C. Odom |
| | 151. Mrs. Rosa Lee Pacetty |

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152. C. J. Passieu
153. C. L. Passieu
154. J. B. Pearce, Sr.
155. Oscar Petty
156. Scott Petty
157. V. J. Pickren
158. N. W. Pickren
159. F. R. Pittman
160. Mrs. R. E. Player
161. M. E. Powell
162. Donald Prescott
163. Ellis Prescott
164. Hampton M. Prescott
165. Hershel Prescott
166. W. H. Prescott
167. W. H. Prescott
168. J. A. Prevatt
169. O. K. Prevatt
170. W. F. Price
171. C. O. Raulerson
172. O. E. Raynor
173. Mrs. O. E. Raynor
174. W. W. Roberts
175. Fred M. Robinson
177. E. O. Robinson
178. J. F. Roddenberry
179. Ben Rodgers
180. G. H. Sheppard
181. B. L. Shivar
182. John H. Shuman
183. J. W. Shuman
184. D. E. Sikes
185. Floyd A. Sikes
186. C. D. Simms
187. Benny Smith
188. Mahlon Smith
189. Virgil Smith
190. J. B. Southwell, Jr.
191. J. B. Southwell, Sr.
192. E. B. Stapleton, Sr.

193. C. P. Stapleton
194. E. B. Stapleton, Jr.
195. Ivan Steele
196. D. L. Stewart, Sr.
197. L. E. Stokes
198. Jasper Stokes
199. P. O. Stokes
200. C. L. Stonecypher
201. R. B. Stroup
202. F. V. Sweat
203. A. L. Taylor
204. J. S. Taylor
205. Roy M. Thomas, Sr.
206. W. L. Thomas, Sr.
207. M. D. Thrift
208. I. B. Tomlinson
209. John S. Tyson, Jr.
210. J. M. Wade
211. L. I. Wade
210. Neill G. Wade III
211. D. R. Wainwright
212. M. G. White
213. Harold T. White
214. Mrs. Katherine Wildes
215. R. H. Wildes, Sr.
216. Dayton Woolard
217. H. W. Wollard
218. Rayford Woolard
219. W. L. Woolard
220. E. H. Wright
221. Raymond Altman
222. Tom Brock
223. Vernon Brock
224. Harry Chesser, Sr.

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226. Willie Dixon
227. Brantley Gay
228. A. G. Gowen
229. S. G. Gibson
230. Glenn Gibson
231. Lewis Harden

- | | |
|----------------------------------|-------------------------|
| 232. O. F. Harden | 272. S. C. Stokes |
| 233. Charlie E. Harden | 273. Benton Thompson |
| 234. Julian Huggins | 274. Farley L. Burnsed |
| 235. Carl Jones | 275. B. L. Canaday |
| 236. T. H. McLean | 276. Geo. W. Chism |
| 237. Clarence O'Quinn | 277. Alton Crawford |
| 238. Malcolm C. Rodden-
berry | 279. Earl Davis |
| 239. Newton Roddenberry | 280. Rayford Gainey |
| 240. T. L. Roddenberry | 281. Wallace Hodges |
| 241. Mrs. Eva Stokes | 282. G. C. Knabb |
| 242. R. C. Taylor | 283. Douglas Raulerson |
| 243. Roy A. Taylor | 284. Clyde Sands |
| 244. J. E. Turner | 285. A. L. Thrift |
| 245. John A. Barker | 286. Alfred Thrift |
| 246. R. F. Beard | 287. Buford Thrift |
| 247. W. H. Cohen | 288. Arthur Carter |
| 248. F. G. Conner | 289. Morgan Chesser |
| 249. Mrs. Dorothy Cranford | 290. James P. Coleman |
| 250. Harold Crawford | 291. J. P. Conner |
| 251. Lawrence Crawford | 292. A. D. Crews |
| 252. Mrs. Velma M. Craw-
ford | 293. Hilton Crews |
| 253. Champ Crews | 294. Basil Crews |
| 254. Fell Crews | 295. Buster Crews |
| 255. Hardy L. Crews | 296. Oscar L. Crews |
| 256. Henry Crews | 297. O. B. Davis |
| 257. Leon Crews | 298. W. B. Dinkins |
| 258. B. G. Griner | 299. Alton Dinkins |
| 259. Edward Hickox | 300. Mrs. B. B. Gowen |
| 260. Charlie Hodges | 301. Barney Gowen |
| 261. Willie H. Hodges | 302. Mrs. N. A. Griffin |
| 262. W. C. Hopkins | 303. Paul Hickox |
| 263. Donald Nettles | 304. S. M. Howard |
| 264. Wm. A. Norman | 305. Hilton Keene |
| 265. Fred F. Osterman | 306. H. P. McDuffie |
| 266. Fred Privett | 307. S. C. Padgett |
| 267. Charles Raulerson | 308. J. A. Stanfield |
| 268. Rudy R. Raulerson | 309. Robert N. Staton |
| 269. W. E. Renshaw | 310. Jimmy Todd |
| 270. W. R. Simpson | 311. Theodore Tucker |
| 271. Noah Stokes | 312. H. H. Barber |
| | 313. Wilbur Crews |
| | 314. Sammy Hendrix |

415. George W. Johns
 316. J. E. Johns
 317. J. J. Johns
 318. George R. Lee
 319. T. J. O'Quinn
 320. B. M. Prescott
 321. William M. Prescott

1C. Timothy Haygood
 2C. James Mack
 3C. R. H. Littles
 4C. Herman Everett
 5C. Odis Ledbetter
 6C. Joe Walker
 7C. Sam Hannans

[fol. 354] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA

DEFENDANT'S EXHIBIT No. 14

Names Put in Traverse Jury Box August 1, 1960 by
Jury Revisors

- | | |
|---------------------------|--------------------------|
| 1. J. C. Adams 1 | 35. Z. W. Conner 18 |
| 2. Loyce Aldridge 2 | 36. J. J. Conner 19 |
| 3. E. F. Allen 3 | 37. F. F. Crews |
| 4. Lawrence Allen | 38. Hugh Crews |
| 5. W. R. Allen, Sr. 4 | 39. Ivey B. Crews (Buck) |
| 6. Hiram Altman | 40. J. Earl Crews 20 |
| 7. James W. Altman | 41. J. Elbert Crews |
| 8. O. M. Altman 5 | 42. J. Melton Crews |
| 9. S. M. Altman, Jr. 119 | 43. Jimmie H. Crews |
| 10. B. A. Anderson | 44. Julian Crews 21 |
| 11. Luke C. Andrews 6 | 45. M. J. Crews |
| 12. Fred Askew, Jr. 7 | 46. Mose Crews (Benlah) |
| 13. J. W. Askew | 47. Frank H. Davis 22 |
| 14. Leon Askew 8 | 48. S. J. Davis, Sr. |
| 15. E. M. Batton, Jr. 120 | 49. B. Hoyt Deloach 2 |
| 16. George N. Birdsong 9 | 50. L. H. Devane |
| 17. R. H. Bragg | 51. D. R. Dinkins |
| 18. J. M. Brock 121 | 52. Dell Dinkins |
| 19. Roy E. Brogden 10 | 53. Theo Dinkins 24 |
| 20. R. W. Bruschke | 54. Lee Dixon 25 |
| 21. Walter H. Bruschke 11 | 55. Ralph J. Duggan, Sr. |
| 22. Bailey Bryant | 56. Robert Earley |
| 23. Robert T. Bryant | 57. James L. Eaton 26 |
| 24. Edd Bryson | 58. J. N. Elder |
| 25. T. R. Butts 12 | 59. J. L. Eunice, Sr. |
| 26. Cecil R. Carter 13 | 60. Lawrence Flewell |
| 27. Clarence Carter | 61. Marion P. Gantt |
| 28. M. J. Chancey 14 | 62. M. A. Gay 27 |
| 29. Norman G. Chesser | 63. Charles H. Gibson 28 |
| 30. Noah Lee Clark 15 | 64. W. E. Gibson |
| 31. W. F. Clark 16 | 65. C. E. Glenn 29 |
| 32. George M. Coleman | 66. B. H. Gowen |
| 33. J. P. Conner | 67. C. C. Gowen 30 |
| 34. J. T. Conner 17 | 68. E. C. Gowen |

69. Ferris D. Gowen
 70. G. B. Gowen, III
 71. B. W. Gowen
 72. S. H. Gowen 31
 [fol. 355]
 73. T. C. Gowen 32
 Lonnie Guinn
 75. J. S. Haddock, Jr. 33
 76. W. C. Hall 34
 77. J. O. Hannaford, Jr.
 78. Maurice Hannaford
 79. W. C. Harden 35
 80. L. A. Higginbotham 36
 81. J. B. Hinson
 82. Roy Hodges
 83. A. J. Hopkins, Jr. 37
 84. Colquitt D. Hopkins 38
 85. H. E. Huggins
 86. D. Ray James 39
 87. W. O. Johns
 88. A. R. Johnson 40
 89. E. H. Johnson, Jr. 41
 90. H. R. Johnson 42
 91. G. Norris Johnson
 92. R. K. Johnson
 93. J. A. Jones, Jr.
 94. J. C. Jones, Jr.
 95. Carl Lane 43
 96. Ben H. Lee
 97. M. C. Leslie 44
 98. Doyle C. Lewis
 99. E. R. Lott 45
 100. M. A. McAndrew
 101. John D. McCoy
 102. Robert McCoy
 103. J. L. McKendree 46
 104. Pete McNeil
 105. L. D. Majors 47
 106. Jack R. Mays
 107. Richard P. Mays 48
 108. Alton M. Mizell
 109. Harold Mizell
 110. Truitt Mizell
 111. Wm. Mizell 49
 112. O. C. Mizell 50
 113. J. B. Moore 51
 114. Colonel Morgan
 115. W. L. Morris, Sr.
 116. C. Francis Murray
 117. J. R. Nance 52
 118. George A. Nazworth
 119. John E. Norris
 120. Rudolph Norwood 53
 121. J. F. O'Berry
 122. Roy O'Berry
 123. W. C. Odom
 124. C. W. Parnell
 125. C. J. Passieu
 126. C. L. Passieu
 127. Scott Petty
 128. S. L. Pickren
 129. Verne J. Pickren 54
 130. W. W. Pickren 55
 131. F. R. Pittman, Sr.
 132. Donald P. Prescott 56
 133. Eston Prescott
 134. J. A. Prevatt
 135. O. K. Prevatt
 136. H. K. Rigdom
 137. E. O. Roberson 57
 138. W. W. Roberts
 139. Fred M. Roberson
 140. J. Frank Roddenberry
 58
 141. J. L. Rowell 59
 142. B. L. Shivar
 143. J. W. Shuman 60
 144. D. E. Sikes
 145. A. D. Simmons
 146. Benney Smith
 147. Mahlon Smith
 148. J. B. Southwell, Jr. 61
 149. J. B. Southwell, Sr. 62

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- 150. Allen Spurlock
- 151. C. Pearce Stapleton 63
- 152. E. B. Stapleton, Jr. 64
- 153. E. B. Stapleton, Sr. 65
- 154. J. W. Steedley
- 155. Ivan Steele 66
- 156. D. L. Stewart, Sr. 67
- 157. L. Jasper Stokes 68
- 158. R. B. Stroup
- 159. W. L. Thomas, Jr.
- 160. W. D. Thompson
- 161. John S. Tison, Jr.
- 162. J. M. Wade
- 163. N. G. Wade, III 69
- 164. D. R. Wainwright
- 165. Kenneth T. Wainwright
- 166. G. W. White
- 167. Harold T. White 70
- 168. R. H. Wildes, Sr.
- 169. Kenneth Williams 122
- 170. Morris E. Williams
- 171. Larry Williamson
- 172. A. E. Willingham
- 173. Fred C. Woodall 71
- 174. W. L. Woolard
- 175. Joe H. Zanders
- 176. O. S. Aldridge
- 177. Vernon Brock 72
- 178. James I. Bryant
- 179. Harry Chessser 73
- 180. J. T. Chessser
- 181. Willie M. Chessser
- 182. Roland Dixon
- 183. Glenn Gibson 74
- 184. A. G. Gowen
- 185. Albert Gowen
- 186. Charlie E. Harden
- 187. Lewis Harden
- 188. O. F. Harden
- 189. J. D. Hickox 75

- 190. J. C. Jones, Sr. 76
- 191. Thomas Knowles
- 192. John R. Leitch
- 193. T. H. McLean, Sr. 77
- 194. James G. Roddenberry
- 195. Tommy Roddenberry
- 196. Dennis Snowden
- 197. B. C. Taylor 78
- 198. Roy A. Taylor
- 199. Charles C. Bagwell
- 200. John A. Barker 79
- 201. George E. Bell
- 202. Carl Combs
- 203. Lacy Conner
- 204. L. F. Crawford
- 205. Harold Crawford 80
- 206. Willie Crews
- 207. Dean Crews
- 208. Fell Crews 81
- 209. Henry Crews
- 210. Leon Crews 82
- 211. Willie Dixon 83
- 212. L. R. Gainey
- 213. C. L. Hodges
- 214. Willie H. Hodges 84
- 215. Jack Hutson
- 216. Oscar H. Leckie
- 217. Fed Privett 85
- 218. Gilbert Privet
- 219. Noah Rhoden
- 220. W. R. Simpson 86
- 221. Noah Stokes

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- 222. M. O. Suggs
- 223. W. R. Sutton
- 224. Harold Thomas 87
- 225. Orival Thompson
- 226. Bruce Thompson
- 227. Vinton Thompson
- 228. Enoch Burnsed 88
- 229. Alton Crawford 89

- | | |
|------------------------------|---------------------------|
| 230. Sampson Crews | 269. Pasco S. Bryant |
| 231. Earl Davis | 270. J. H. Barfield |
| 232. Raiford Gainey | 271. Walter B. Crews |
| 233. Wallace Hodges | 272. Julian L. Crews |
| 234. N. J. Raulerson | 273. M. G. White 106 |
| 235. Clyde Sands 90 | 274. Nathan Crews |
| 236. Aaron Thrift | 275. S. J. Davis, Jr. 107 |
| 237. Buford Thrift 91 | 276. Harold Lee Guinn |
| 238. L. C. Black | 277. Sammie Hendrix 108 |
| 239. Matthew Carter | 278. Demery Lloyd |
| 240. Morgan Chesser 92 | 279. Oscar Petty |
| 241. James B. Coleman 93 | 280. R. L. Guy 109 |
| 242. Kenneth M. Crews | 281. M. E. Powell 110 |
| 243. Herbert Crews | 282. Ira Rogers, Sr. |
| 244. Lewis Crews | 283. J. M. Jackson |
| 245. Alton Dinkins 94 | 284. E. S. Landell |
| 246. W. B. Dinkins 95 | 285. G. N. Bryant 112 |
| 247. Barney B. Bowen | 286. M. D. Thrift 113 |
| 248. N. A. Griffin | 287. Arthur Carter 114 |
| 249. S. M. Howard 96 | 288. Champ Crews |
| 250. H. P. McDuffie | 289. J. D. O'Quinn |
| 251. Robert N. Staton 97 | 290. W. C. Hopkins 115 |
| 252. Jerald Todd | 291. Yulee Privett |
| 253. Holton Todd | 292. Dayton Woolard |
| 254. Jimmie Todd | 293. Clyde Woolard |
| 255. Theo Tucker | 294. Thomas H. Crews 116 |
| 256. George W. Crews 98 | 295. R. G. Vinson |
| 257. Hershel Crews | |
| 258. Wilbur Crews 99 | [fols. 358-359] |
| 259. Tom W. Harris 100 | 296. Leonard Crews |
| 260. J. E. Johns | 297. W. E. Stuckey 117 |
| 261. B. M. Prescott, Sr. 102 | 298. W. L. Thomas, Sr. |
| 262. Everett Thrift | 299. Everett Prescott |
| 263. Alvin K. Sixeas | 300. Jesse Gaskin |
| 264. C. F. Adkins | 301. Mose Austin |
| 265. Robert Adkins | 302. Ed Brown |
| 266. W. R. Allen, Jr. | 303. Sam Hannan |
| 267. J. J. Johns | 304. Joe Walker |
| 267. J. J. Johns 104 | 305. James Mack |
| 268. T. J. O'Quinn 105 | 306. Clyde Walker |

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COUNTY, GEORGIA

DEFENDANT'S EXHIBIT No. 15

- | | |
|------------------------|----------------------------|
| 1. J. C. Adams | 38. J. J. Conner |
| 2. C. F. Adkins | 39. J. T. Conner |
| 3. Loyce Aldridge | 40. Z. W. Conner |
| 4. E. F. Allen | 41. Robert L. Corley |
| 5. Lawrence Allen | 42. Irvin Crews |
| 6. W. R. Allen, Sr. | 43. F. F. Crews |
| 7. W. R. Allen, Jr. | 44. Hilton Crews |
| 8. Hiram Altman | 45. Hugh Crews |
| 9. James Altman | 46. Ivy B. Crews (Buck) |
| 10. O. M. Altman | 47. J. M. Crews |
| 11. S. M. Altman | 48. J. Earl Crews |
| 12. Luke C. Andrews | 49. J. Elbert Crews |
| 13. Fred Askew, Jr. | 50. Jimmy H. Crews |
| 14. Leon Askew | 51. Julian L. Crews |
| 15. J. H. Barfield | 52. M. J. Crews |
| 16. Hubert Bashler | 53. Mose Crews (Bula) |
| 17. E. M. Batten, Jr. | 54. Nathan A. Crews |
| 18. George N. Birdsong | 55. Riley W. Crews |
| 19. R. H. Bragg, Sr. | 56. Thomas H. Crews |
| 20. J. M. Brock | 57. Walter B. Crews (City) |
| 21. Roy E. Brodgen | 58. Eugene Davis |
| 22. R. W. Brusckke | 59. Frank H. Davis |
| 23. Walter H. Brusckke | 60. L. F. Davis |
| 24. Bailey Bryant | 61. S. J. Davis, Sr. |
| 25. J. W. Bryant | 62. S. J. Davis, Jr. |
| 26. Pasco S. Bryant | 63. B. Hoyt Deloach |
| 27. Robert T. Bryant | 64. L. H. Devane |
| 28. Edd Bryson | 65. D. R. Dinkins |
| 29. Bud Cantrell | 66. Dell Dinkins |
| 30. T. R. Butts | 67. Theo Dinkins |
| 31. Cecil R. Carter | 68. Lee Dixon |
| 32. Clarence Carter | 69. Ralph J. Duggan, Sr. |
| 33. M. J. Chancey | 70. Alex Druash |
| 34. Norman G. Chesser | 71. Robert C. Early |
| 35. Noah Lee Clark | 72. James L. Eaton |
| 36. W. F. Clark | 73. T. W. Edge |
| 37. C. L. Conner | 74. J. N. Elder |

75. Robert Rae Ehion
76. Lucius C. Elkins
77. J. L. Eunice, Sr.
78. Doc Evans
79. Lawrence Flewell
80. W. F. Finley
81. Marion P. Gantt
82. Jessie Gaskin
83. M. A. Gay
84. Charles H. Gibson
85. W. E. Gibson
86. C. E. Glenn
87. B. H. Gowen
88. C. C. Gowen
89. E. Clyde Gowen
90. Ferris D. Gowen
91. G. R. Gowen, III
92. Thomas C. Gowen, Jr.
93. R. W. Gowen
94. S. H. Gowen
95. T. C. Gowen
96. Clyde Guinn
97. Harold Guinn
98. Lonnie Guinn
99. R. L. Guy
100. J. S. Haddock, Sr.
101. W. C. Hall
102. J. O. Hannaford, Jr.
103. Maurice Hannaford
104. W. C. Harden
105. John Harris
106. Robert E. Hill
107. L. A. Higginbotham
108. J. B. Hinson, Sr.
109. Roy Hodges
110. A. J. Hopkins, Jr.
111. Colquitt D. Hopkins
112. W. E. Hopkins
113. H. E. Huggins
114. J. M. Jackson
115. D. Ray James
116. W. O. Johns
117. A. R. Johnson
118. B. S. Johnson
119. E. H. Johnson, Jr.
120. H. R. Johnson
121. G. Norris Johnson
122. R. K. Johnson
123. J. A. Jones, Jr.
124. J. C. Jones, Jr.
125. Virgil Kelly
126. Jeffrey Knowles
127. Wm. H. Knox
128. Carl Lane
129. Ben H. Lee
130. M. C. Leslie
131. Doyle C. Lewis
132. E. R. Lott
133. Dr. E. S. Lundell
134. John D. McCoy
135. Robert McCoy
136. Jim L. McKindree
137. Pete McNeil
138. L. D. Majors
139. Jack R. Mays
140. Richard P. Mays
141. Alton M. Mizell
142. Harold Mizell
143. Truitt Mizell
144. William Mizell, Jr.
145. O. C. Mizell
146. J. B. Moore
147. Coloney Morgan
148. W. L. Morris, Sr.
149. C. Francis Murray
150. J. R. Nance
- [fol. 362]
151. George A. Nazworth
152. O. L. Nobles
153. John F. Norris
154. Rudolph Norwood
155. J. F. O'Berry
156. Roy O'Berry

157. W. C. Odom
158. C. W. Passieu
159. C. J. Passieu
160. C. L. Passieu
161. Scott Petty
162. S. L. Pickren
163. Vern J. Pickren
164. W. W. Pickren
165. F. R. Pittman, Sr.
166. John W. Poulson
167. M. F. Powell, Sr.
168. Donald F. Prescott
169. Eston Prescott
170. J. A. Prevatt
171. O. K. Prevatt
172. C. H. Quick
173. H. K. Rigdon
174. F. O. Roberson
175. W. W. Roberts
176. Fred N. Roberson
177. J. Frank Roddenberry
178. Ira L. Rogers
179. J. A. Rowell
180. Jack L. Scott
181. B. L. Shivar
182. John H. Shuman
183. J. W. Shuman
184. D. F. Sikes
185. A. D. Simmons
186. Bennie Smith
187. Mahlon Smith
188. J. B. Southwell, Sr.
189. J. B. Southwell, Jr.
190. Allen Spurlock
191. C. P. Stapleton
192. E. B. Stapleton, Jr.
193. E. B. Stapleton, Sr.
194. J. W. Steedley
195. Ivan Steele
196. D. L. Stewart, Sr.
197. L. Jasper Stokes
198. L. E. Stokes, Sr.
199. Albert Stokes
200. P. O. Stokes
201. C. F. Stroup
202. R. B. Stroup
203. Dr. J. S. Taylor
204. W. L. Thomas, Sr.
205. W. L. Thomas, Jr.
206. W. D. Thompson
207. John S. Tyson, Jr.
208. J. M. Wade
209. N. G. Wade, III
210. D. R. Wainwright
211. Kenneth J. Wainwright
212. G. W. White
213. Harold T. White
214. R. H. Wildes, Sr.
215. Kenneth Williams
216. Morris E. Williams
217. A. F. Willingham
218. Fred C. Woodall
219. Dayton Woolard
220. W. L. Woolard
221. F. H. Wright
222. Joe H. Zanders
223. O. S. Aldridge
224. Vernon Brock
225. James I. Bryant
226. Harry Chesser
227. J. T. Chesser
228. Wm. M. Chesser
229. J. D. Colson
230. Roland Dixon
231. Glenn Gibson
232. A. G. Gowen
233. Albert Gowen
234. Charlie E. Harden
235. Lewis Harden
236. O. F. Harden
237. J. D. Hickox
238. J. C. Jones, Sr.
239. Thomas Knowles
240. John R. Leitch
241. T. H. McClain, Sr.

242. James G. Rodden-
berry
 243. Tommy Roddenberry
 244. Dennis Snowden
 245. R. F. Taylor
 246. Roy A. Taylor
 247. Charles C. Bagwell
 248. John A. Barker
 249. W. D. Bell
 250. George E. Bell
 251. Lacy Conner
 252. L. F. Crawford
 253. Harold Crawford
 254. Willie Crews
 255. Cramp Crews
 256. George H. Crews
(St. George)
 257. Dean Crews
 258. Fell Crews
 259. Leon Crews
 260. Henry Crews
 261. Willie Dixon
 262. L. R. Gainey
 263. R. B. Griner
 264. C. L. Hodges
 265. Grover Hodges
 266. Willie H. Hodges
 267. Jack Huston
 268. Oscar H. Leckie
 269. Fed Privett
 270. Gilbert Privett
 271. Sherman Raulerson
 272. Noah Rhoden
 273. W. R. Simpson
 274. Noah Stokes
 275. W. C. Suggs
 276. W. R. Sutton
 277. Harold Thomas
 278. Orvial Thompson
 279. Bruce Thompson
 280. Vinton Thompson
 281. Enoch Brunsed
 282. George Chisom

283. Alton Crawford
 284. Johnnie Crawford
(Moniac)
 285. Rayford Gainey
 286. Wallace Hodges
 287. Sampson Crews
 288. Earl Davis
 289. N. J. Raulerson
 290. Clyde Sands
 291. Aaron Thrift
 292. Buford Thrift
 293. Alvin K. Sixeas
 294. Robert C. Adkins
 295. M. G. White
 296. Demery Lloyd
 297. Oscar Petty
 298. G. N. Bryant
 299. Everett Prescott
 300. L. C. Black

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301. Mathew Carter
 302. Morgan Chesser
 303. James B. Coleman
 304. Kenneth M. Crews
 305. Hubert Crews
 306. Lewis Crews
 307. Alton Dinkins
 308. W. R. Dinkins
 309. John Drury
 310. Barney B. Gowen
 311. N. A. Griffin
 312. S. M. Howard
 313. H. P. McDuffy
 314. Robert N. Staton
 315. Holton Todd
 316. Jimmy Todd
 317. John Willie Todd
 318. Theo Tucker
 319. George W. Crews
 320. Wilbur Crewes
 321. Tom W. Harris
 322. J. F. Jones

- 323. D. M. Prescott, Sr.
- 324. Everett Thrift
- 325. J. J. Johns
- 326. T. J. O'Quinn
- 327. Leonard Crews
- 328. Sammy Hendrix
- 329. M. D. Thrift
- 330. Arthur Carter
- 331. J. D. O'Quinn
- 332. Mose Austin
(Colored)

- 333. Edd Brown (Colored)
- 334. Sam Hannon
(Colored)
- 335. Joe Walker (Colored)
- 336. James Mack
(Colored)
- 337. Clyde Walker
(Colored)

[fol. 365] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA

DEFENDANT'S EXHIBIT No. 16

- | | |
|---------------------------|----------------------------|
| 1. G. N. Bryant | 38. Clyde Sands |
| 2. J. W. Askew | 39. Wallace Hodges |
| 3. Bob Phillips | 40. Peter J. Fulton |
| 4. George E. Bell | 41. Sampson Crews |
| 5. Roland Dixon | 42. Willie M. Chesser |
| 6. Raiford Woolard | 43. T. M. Peacock |
| 7. H. G. Willingham | 44. C. L. Passieu |
| 8. Bud Cantrell | 45. Ferris D. Gowen |
| 9. J. C. Jones Sr. | 46. Doyle C. Lewis |
| 10. Ed Brown | 47. Lonnie Guinn |
| 11. Harold T. White | 48. Riley W. Crews |
| 12. O. F. Harden | 49. J. L. Rowell |
| 13. J. A. Kendricks | 50. R. W. Gowen |
| 14. Joe H. Zanders | 51. S. J. Davis Sr. |
| 15. Charlie E. Harden | 52. D. R. Dinkins |
| 16. Lewis Crews | 53. Barney B. Gowen |
| 17. Jim L. McKendree | 54. Robert T. Bryant |
| 18. J. A. Nazworth | 55. S. J. Davis Jr. |
| 19. Morris F. Williams | 56. L. H. Devane |
| 20. J. Elvin Carter | 57. J. E. Bryant |
| 21. Aaron Thrift | 58. M. J. Crews |
| 22. Robert McCoy | 59. G. R. Gowen III |
| 23. W. C. Sanderson | 60. Hilton Crews |
| 24. Kenneth T. Wainwright | 61. Mose Crews |
| 25. Kenneth Williams | 62. Jake Petty |
| 26. Vernon Brock | 63. Roy O'Berry |
| 27. Lott W. Turner | 64. Ivy B. Crews |
| 28. Roy A. Taylor | 65. M. E. Powell Sr. |
| 29. O. M. Altman | 66. Dennis L. Higginbotham |
| 30. B. M. Prescott Sr. | 67. R. K. Johnson |
| 31. Kenneth M. Crews | 68. Enoch Burnsed |
| 32. L. C. Black | 69. F. L. Burnsed |
| 33. N. J. Raulerson | 70. Celdon Crawford |
| 34. John W. Logan | 71. Maurice Hannaford |
| 35. L. D. Majors | 72. J. Frank O'Berry |
| 36. Donald Prescott | 73. O. S. Aldridge |
| 37. Buford Thrift | 74. H. E. Huggins |

75. Ernest V. Horne
76. Colquitt D. Hopkins
[fol. 366]
77. L. H. Higginbotham

78. W. C. Harden
79. Roy Hodges
80. E. H. Johnson Jr.
81. Mannie T. Guy
82. Oscar Petty

[fol. 367] STATE OF GEORGIA,
County of Charlton:

I, the undersigned, hereby certify that the foregoing two pages constitute a true and correct copy of list of Petty Jurors who served at the October, 1963 term of Charlton Superior Court.

Witness my hand and the seal of this court this the 14th day of December, 1963.

Clyde Woolard, Clerk of Superior Court, Charlton
County, Folkston, Georgia.

[fol. 368] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA

DEFENDANT'S EXHIBIT No. 17

- | | |
|----------------------|-----------------------|
| 1. Tommy Roddenberry | 12. Hugh Crews |
| 2. Fed Privett | 13. E. Clyde Gowen |
| 3. E. R. Lott | 14. R. W. Bruschke |
| 4. Herbert Crews | 15. C. J. Passieu |
| 5. C. W. Parnell | 16. James B. Coleman |
| 6. J. R. Nance | 17. Alton Dinkins |
| 7. Alton Mizell | 18. J. H. Brock |
| 8. Frank Roddenberry | 19. Ben H. Lee |
| 9. Rudolph Norwood | 20. F. R. Pittman Sr. |
| 10. W. W. Pickren | 21. Carl Lane |
| 11. George Birdsong | 22. Mahlon Smith |

[fol. 369] STATE OF GEORGIA,
County of Charlton:

I, the undersigned, hereby certify that the foregoing page is a true and correct copy of list of grand jurors who served at the October, 1963, term of Charlton Superior Court.

Witness my hand and the official seal of this court this the 14th day of December, 1963.

Clyde Woolard, Clerk of Superior Court, Charlton
County, Folkston, Georgia.

[fol. 370] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA

DEFENDANT'S EXHIBIT No. 18

- | | |
|------------------------|----------------------------|
| 1. J. C. Adams | 38. M. J. Chancey |
| 2. C. F. Adkins | 39. Norman G. Chesser |
| 3. Loyce Aldrid | 40. W. F. Clark |
| 4. E. F. Allen | 41. C. L. Conner |
| 5. Homer W. Allen | 42. J. J. Conner |
| 6. Lawrence Allen | 43. J. T. Conner |
| 7. W. R. Allen, Sr. | 44. J. P. Conner |
| 8. Estes E. Altman | 45. Z. W. Conner |
| 9. James W. Altman | 46. Robert L. Corley |
| 10. O. M. Altman | 47. Oden Crawford |
| 11. S. M. Altman, Jr. | 48. Ervin Crews |
| 12. B. A. Anderson | 49. F. F. Crews |
| 13. James A. Anderson | 50. Hilton Crews |
| 14. Luke C. Andrews | 51. Hugh Crews |
| 15. Fred Askew, Jr. | 52. Ivey B. Crews (Buck) |
| 16. J. W. Askew | 53. J. M. Crews |
| 17. Leon Askew | 54. J. Earl Crews |
| 18. J. H. Barfield | 55. J. Elbert Crews |
| 19. Hubert Bashler | 56. Jimmy H. Crews |
| 20. E. M. Batton, Jr. | 57. Julian Crews |
| 21. Julian H. Bennett | 58. Julian L. Crews |
| 22. George N. Birdsong | 59. M. J. Crews |
| 23. R. H. Bragg, Jr. | 60. Mose Crews (Beulah) |
| 24. R. H. Bragg, Sr. | 61. Nathan A. Crews |
| 25. J. M. Brock | 62. Oscar E. Crews |
| 26. Roy F. Brogden | 63. Quinton Crews |
| 27. R. W. Bruschke | 64. Riley W. Crews |
| 28. Walter H. Bruschke | 65. Thomas H. Crews |
| 29. J. E. Bryant | 66. Walter B. Crews (City) |
| 30. J. W. Bryant | 67. Alvin Davis |
| 31. James F. Bryant | 68. Eugene Davis |
| 32. Pasco S. Bryant | 69. Frank H. Davis |
| 33. Robert T. Bryant | 70. S. J. Davis, Sr. |
| 34. T. R. Butts | 71. S. J. Davis, Jr. |
| 35. Bud Cartrell | 72. B. Hoyt DeLeach |
| 36. Cecil R. Carter | 73. (Copy Illegible) |
| 37. Clarence Carter | 74. (Copy Illegible) |

75. (Copy Illegible)

[fol. 371]

- 76. Eugene Dinkins
- 77. Theo Dinkins
- 78. Lee Dixon
- 79. Ralph J. Duggan, Sr.
- 80. B. E. Duke
- 81. Wilford N. Eason
- 82. Sam M. Eason
- 83. T. W. Edge
- 84. J. N. Elder
- 85. J. L. Eunice, Sr.
- 86. Doc Evans
- 87. Lawrence Flewell
- 88. W. F. Finley
- 89. Marion P. Gantt
- 90. Charles H. Gibson
- 91. (Copy Illegible)
- 92. B. H. Gowen
- 93. Clift Gowen
- 94. E. Clyde Gowen
- 95. Ferris D. Gowen
- 96. G. R. Gowen, III
- 97. R. W. Gowen
- 98. S. H. Gowen
- 99. T. C. Gowen
- 100. Harold Guinn
- 101. Lonnie Guinn
- 102. Mannie T. Guy
- 103. R. L. Guy
- 104. J. S. Haddock, Jr.
- 105. W. C. Hall
- 106. J. O. Hannaford, Jr.
- 107. Maurice Hannaford
- 108. W. C. Harden
- 109. John Harris
- 110. R. Ward Harrison
- 111. Robert E. Hill
- 112. Dennie L. Higginbotham
- 113. L. H. Higginbotham

- 114. Roy Hodges
- 115. Colquitt D. Hopkins
- 116. W. C. Hopkins
- 117. Ernest V. Horne
- 118. H. E. Huggins
- 119. J. M. Jackson
- 120. Bobby Lee James
- 121. D. Ray James
- 122. A. R. Johnson
- 123. E. H. Johnson, Jr.
- 124. H. R. Johnson
- 125. G. Norris Johnson
- 126. R. K. Johnson
- 127. J. A. Jones, Jr.
- 128. J. C. Jones, Jr.
- 129. Virgil Kelly
- 130. Jeffrey Knowles
- 131. Carl Lane
- 132. Ben H. Lee
- 133. Dominey Lee
- 134. M. C. Leslie
- 135. Doyle C. Lewis
- 136. John W. Logan
- 137. E. R. Lott
- 138. Dr. E. S. Lundell
- 139. John D. McCoy
- 140. Robert McCoy
- 141. Jim L. McKendree
- 142. L. D. Majors
- 143. Jack R. Mays
- 144. Richard P. Mays
- 145. James M. Mincey
- 146. Alton M. Mizell
- 147. Harold Mizell
- 148. Truitt Mizell
- 149. Wm. Mizell, Jr.
- 150. O. C. Mizell
- 151. J. B. Moore
- 152. J. E. Moore
- 153. S. D. Moore
- 154. Colonel Morgan
- 155. W. L. Morris, Sr.

156. C. Francis Murray
157. J. R. Nance
158. George A. Nazworth
159. J. A. Nazworth
160. Donald Nettles
161. John E. Norris
162. Rudolph Norwood
163. J. Frank O'Berry
164. Roy O'Berry
165. W. C. Odor
166. (Copy Illegible)
167. J. T. Pascal
168. C. J. Passieu
169. C. L. Passieu
170. T. M. Peacock
171. Jake Petty
172. Oscar Petty
173. Scott Petty
174. Bob Phillips
175. E. L. Phillips
176. Donald Phillips
177. S. L. Pickren
178. Vern J. Pickren
179. W. W. Pickren
180. F. R. Pittman, Sr.
- [fol. 372]
181. M. E. Powell, Sr.
182. Donald P. Prescott
183. Eston Prescott
184. Everett Prescott
185. Oliver Prescott
186. J. A. Prevatt
187. O. K. Prevatt
188. Wm. F. Price
189. O. E. Raynor
190. H. K. Rigdon
191. E. O. Roberson
192. W. W. Roberts
193. Charles Davis Roberts
194. Fred N. Roberson
195. J. Frank Roddenberry
196. Ira L. Rogers, Sr.
197. J. L. Rowell
198. W. C. Sanderson
199. Jack L. Scott
200. B. L. Shivar
201. John H. Shuman
202. John D. Sharpe
203. J. W. Shuman
204. D. E. Sikes
205. Bennie Smith
206. Mahlon Smith
207. J. B. Southwell, Sr.
208. J. B. Southwell, Jr.
209. Allen Spurlock
210. E. B. Stapleton, Jr.
211. E. B. Stapleton, Sr.
212. C. P. Stapleton
213. Ivan Steele
214. D. L. Stewart, Sr.
215. L. E. Stokes
216. L. Jasper Stokes
217. Albert Stokes
218. P. O. Stokes
219. J. W. Steedley
220. Alvin K. Sixeas
221. A. L. Taylor
222. Dr. J. S. Taylor
223. W. L. Thomas, Sr.
224. W. L. Thomas, Jr.
225. W. D. Thompson
226. I. B. Tomlinson
227. Lott W. Turner
228. John S. Tyson, Jr.
229. J. M. Wade
230. N. G. Wade, III
231. D. R. Wainwright
232. Kenneth T. Wainwright
233. G. W. White
234. Harold T. White
235. M. G. White
236. R. H. Wildes, Sr.
237. Kenneth Williams

- 238. Morris E. Williams
- 239. A. F. Willingham
- 240. H. G. Willingham
- 241. Fred C. Woodall
- 242. Dayton Woolard
- 243. Eldon Woolard
- 244. Raiford Woolard
- 245. W. L. Woolard
- 246. Joe H. Zanders
- 247. O. S. Aldridge
- 248. Vernon Brock
- 249. G. N. Bryant
- 250. James I. Bryant
- 251. J. W. Burch
- 252. Harry Chesser
- 253. J. T. Chesser
- 254. Willie M. Chesser
- 255. J. D. Colson

[fol. 373]

- 256. Bernie Davis
- 257. Roland Dixon
- 258. Glenn Gibson
- 259. A. G. Gowen
- 260. Albert Gowen
- 261. Charlie E. Harden
- 262. Lewis Harden
- 263. O. F. Harden
- 264. J. D. Hickox
- 265. J. C. Jones, Sr.
- 266. T. H. McLean, Sr.
- 267. Clarence O'Quinn
- 268. M. C. Peacock
- 269. James G. Roddenberry
- 270. Tommy Roddenberry
- 271. Dennis Snowden
- 272. Owen M. Taylor
- 273. R. C. Taylor
- 274. Roy A. Taylor (son of
Richard Taylor)
- 275. Francis Turner
- 276. J. E. Turner

- 277. Charles C. Boswell
- 278. John A. Barker
- 279. W. D. Bell
- 280. George E. Bell
- 281. Lacy Conner
- 282. L. F. Crawford
- 283. Harold Crawford
- 284. Willie Crews
- 285. Champ Crews
- 286. Dean Crews
- 287. Fell Crews
- 288. Henry Crews
- 289. Leon Crews
- 290. Willie Dixon
- 291. L. R. Gainey
- 292. R. B. Griner
- 293. Edward Hickox
- 294. C. L. Hodges
- 295. Grover Hodges
- 296. Willie H. Hodges
- 297. Jack Hutson
- 298. Oscar H. Leckie
- 299. Fed Privett
- 300. Gilbert Privett
- 301. Sherman Raulerson
- 302. Noah Rhoden
- 303. W. R. Simpson
- 304. Noah Stokes
- 305. W. C. Suggs
- 306. W. R. Sutton
- 307. Harold Thomas
- 308. Enoch Burnsed
- 309. F. L. Burnsed
- 310. R. L. Canady
- 311. George W. Chisim
- 312. Alton Crawford
- 313. Celdon Crawford
- 314. Johnny Crawford
- 315. Sampson Crews
- 316. Earl Davis
- 317. Raiford Gainey
- 318. Wallace Hodges

319. Clyde Sands
 320. Aaron Thrift
 321. Buford Thrift
 322. N. J. Raulerson
 323. L. C. Black
 324. Arthur Carter
 325. J. Elvin Carter
 326. Matthew Carter
 327. Morgan Chessser
 328. James B. Coleman
 329. A. D. Crews
 330. Kenneth M. Crews
 331. Herbert Crews
 332. Leonard Crews
 333. Lewis Crews
 334. Riley Crews
 335. Alton Dinkins
 336. W. R. Dinkins
 337. Barney B. Gowen
 338. N. A. Griffin
 339. S. M. Howard
 340. J. A. Kendricks

341. Zeak Layton
 342. H. P. McDuffie
 343. Robert N. Staton
 344. James C. Todd
 345. Jimmy Todd
 346. John Willis Todd
 347. Theo Tucker
 348. Wilbur Crews
 349. Tom W. Harris
 350. J. E. Johns
 351. J. J. Johns
 352. O. K. Lowther
 353. T. J. O'Quinn
 354. B. M. Prescott, Sr.
 355. M. D. Thrift
 356. Henry Lee Bailey
 357. Edd Brunson
 358. Harry Everett
 359. Peter J. Fulton
 360. Edd Brown
 361. Ruby R. Raulerson

[fol. 374] STATE OF GEORGIA,
 County of Charlton:

I, the undersigned, hereby certify that the foregoing pages are a true and correct copy of the Petty Jury list as it was revised by the jury commissioners on September 26, 1962 and appears of record in this the office of the Clerk of Superior Court, Charlton County, Georgia in Minute Book "H", pages 171-172.

Witness my hand and the official seal of this court this the 14th day of December, 1963,

Clyde Woodard, Clerk of Superior Court, Charlton
 County, Folkston, Georgia.

[fol. 375] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA

DEFENDANT'S EXHIBIT No. 19

List of Jurors in the Case of

Wed.

- | | |
|-------------------------|-------------------------------|
| 1. Lawrence Flewell | 35. C. L. Passieu |
| 2. Lewis Crews | 36. Oscar H. Leckie |
| 3. George W. Chism | 37. O. D. Raulerson |
| 4. Charles J. West | 38. William Smith |
| 5. G. W. Crews | 39. Richard P. Mays |
| 6. W. C. Hall | 40. B. M. Prescott, Jr. |
| 7. Arnold Johns | 41. T. H. McLean |
| 8. George E. Bell | 42. James Vernon Aldridge |
| 9. Julian Crews | 43. George Johns |
| 10. C. L. Conner | 44. F. L. Muarry, Sr. |
| 11. S. C. Padgett | 45. Kenneth T. Wainwright |
| 12. Sol Houston | 46. Oscar S. Fowler |
| 13. Cecil A. Parish | 47. Allen Nasworth |
| 14. Kenneth M. Crews | 48. David Clisson |
| 15. Harley Hickox | 49. Henry L. Bailey |
| 16. Jimmy H. Crews | 50. Vandell Redmond |
| 17. L. H. Devane | 51. J. J. Conner |
| 18. Jack R. Mays | 52. W. L. Morris, Sr. |
| 19. Bruce L. Thompson | 53. Cecil Privett |
| 20. Troy Robinson | 54. Charlie F. Lloyd |
| 21. J. A. Prevatt | 55. Raymond Eugene
Chesser |
| 22. Leon Petty | 56. Eldon Woolard, Sr. |
| 23. Norris Mitchell | 57. W. E. Renshaw |
| 24. Emanuel Knowles | 58. E. M. Batton, Jr. |
| 25. Albert Gowen | 59. Dr. J. S. Taylor |
| 26. George O. Harden | 60. W. F. Price |
| 27. Willie Crews | 61. Eugene Davis |
| 28. W. C. Harden | 62. Earl Crews |
| 29. Charlie Scarbrough | 63. E. Hickox |
| 30. Bobby James | 64. Jerome Crews |
| 31. William Pafford | 65. W. C. Misell |
| 32. Basil Crews | 66. O. K. Lowther |
| 33. Leon Askew | 67. Buford Thrift |
| 34. B. M. Prescott, Sr. | |

68. Central Garard
69. Charlie E. Marden
70. Walter N. Coleman, Jr.
71. Donald Nettles
72. Vern J. Pickren

[fol. 376]

1. Lonnie Guinn
2. Herbert M. Crews
3. Lacy Conner
4. L. C. Black
5. Albert Brantley
6. James Bolden
7. Marvin D. Chancey
8. Wallace Hodges
9. Vinton Thompson
10. Edgar Woolard

11. R. L. Canaday
12. H. L. Clark
13. Emory L. Griffiths
14. Robert Everett
15. L. R. Gainey
16. Edward Hickox
17. D. E. Sikes
18. Francis Turner
19. Morris Taylor
20. W. C. Odom
21. Bud Cantrell
22. Sherman W. Raulerson
23. Fred D. Askew, Jr.
24. J. D. Hickox
25. Cecil J. Glisson
26. J. T. Pascal
27. Felton Thrift

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PAGE

United States Department of Justice



Washington, D.C., December 10, 1963

These presents shall come, Greeting:

That JAMES V. BENNETT whose name is signed to
 the following paper, is now, and was at the time of signing the same,

Director, Bureau of Prisons

_____ duly commissioned and qualified.

As, whereof, I, Robert F. Kennedy

Attorney General of the United States, have
 hereunto caused the Seal of the Department
 of Justice to be affixed and my name to be
 attested by the First Assistant, Administrative
 Division, of the said Department on the day
 and year first above written.

Robert F. Kennedy

Attorney General

By

Sam W. Gann

First Assistant, Administrative Division

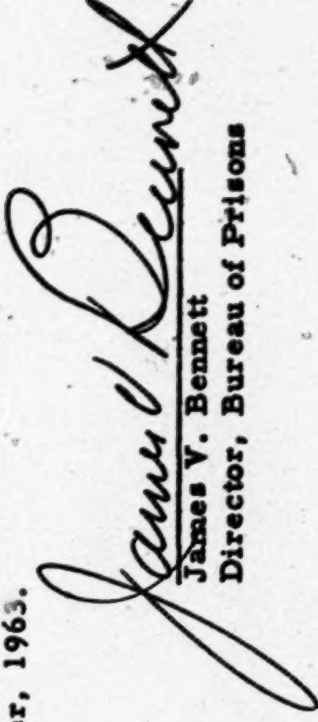
CERTIFICATE

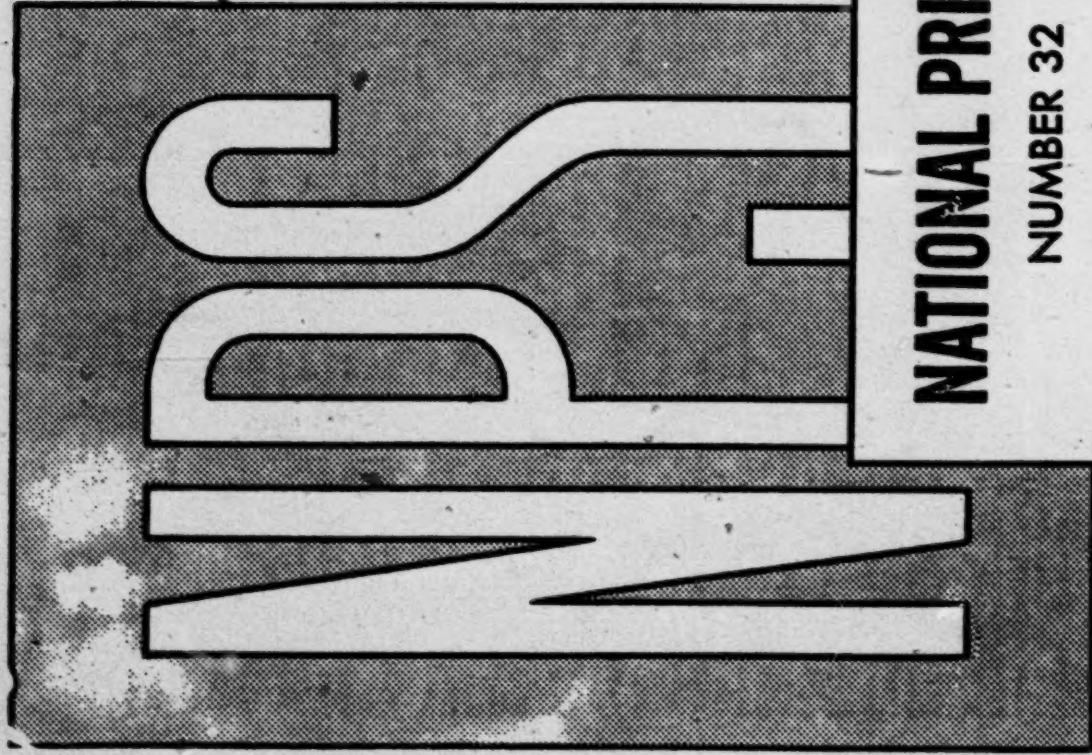
District)
of) ss:
Columbia)

I, James V. Bennett, Director of the Bureau of Prisons, United States Department of Justice, do hereby certify that in my capacity as Director I am the administrative head and custodian of all such records of the aforesaid Bureau.

I further certify that attached hereto is a true and accurate copy of a statistical report, entitled "Executions 1962", which was published as Number 32 in April 1963 of the regular statistical series entitled "National Prisoner Statistics" by the Bureau of Prisons, United States Department of Justice. This report represents our compilation of figures gathered from reports submitted by each of the States concerning executions and sentences.

In Witness Whereof, I have hereunto set my hand
this 10th day of December, 1963.


James V. Bennett
Director, Bureau of Prisons



NATIONAL PRISONER STATISTICS

NUMBER 32 • APRIL, 1963

EXECUTIONS

1962

**UNITED STATES DEPARTMENT OF JUSTICE
ROBERT F. KENNEDY, ATTORNEY GENERAL**

**BUREAU OF PRISONS
JAMES V. BENNETT, DIRECTOR**

WASHINGTON 25, D. C.

EXECUTIONS 1962

COVERAGE

This report covers the 44 civil jurisdictions in the United States where capital punishment may be legally imposed. These jurisdictions include 42 States, the District of Columbia and the Federal government.

Figures are included on all prisoners executed, or pardoned or whose sentence was otherwise modified during 1962 and all known by officials cooperating in the National Prisoner Statistics program to be under sentence of death as of December 31, 1962. The data were obtained primarily from State prison officials. Also contributing were Federal officials and the administrators of the Cook County, Illinois, and the District of Columbia Jails (the only local institutions in this country where executions are carried out). Prisoners under sentence of death who may still be held in local or county jails ordinarily are not included in NPS figures. Exceptions would be in a few States where prisoners awaiting execution may be transferred to State prisons but subsequently returned to a local jail pending outcome of an appeal or other legal action.

The "under sentence of death" term begins when the court first pronounces the sentence of death for a capital offense and ends with the final disposition of the case, either by execution or otherwise. Many prisoners "under sentence of death" at the close of 1962 had received short stays or reprieves granted by State governors. Also, a large number had appeals before State and/or Federal courts. The remaining had their date of execution set for sometime in 1963; these prisoners, however, could still appeal or receive executive or judicial stays.

EXECUTIONS RISE IN 1962

Forty-seven prisoners were executed by civil authority in the United States during calendar year 1962. This represents a 12 percent increase over the 42 executed in 1961. Calendar year 1962 had the second lowest number of executions on record since 1930 when this national series began.

EXECUTING JURISDICTIONS

One or more executions were carried out in 18 of the 44 jurisdictions whose statutes provide for legal capital punishment. Eleven of these jurisdictions also had executions in 1961. Among the other seven with executions in 1962, New Jersey (2) had had none since 1966, Illinois (2) none since 1958, Iowa (2) none since 1952, Kansas (1) none since 1954, Kentucky (1) none since 1966, Oklahoma (1) none since 1960 and Oregon (1) none since 1953.

California, with 11, had the most executions, followed by Texas with 9 and Florida with 5. These three States accounted for 26, or 53 percent, of the 47 executions carried out during the year.

Among the States with no executions in 1962, but one or more in 1961, were New York with 2 in 1961 and Arizona, Indiana, Louisiana, Maryland, Nevada and North Carolina with one each in 1961.

METHOD OF EXECUTION

Fifteen of the 1962 executions were carried out in the lethal gas chamber. This method was used 32 percent of the time in 1962 as compared with 43 percent in 1961. Twenty-nine executions were by electrocution and the remaining three by hanging. Sixty-two

percent of the prisoners executed in 1962 were electrocuted—in 1961, 87 percent were electrocuted. There were no hangings in 1961.

OFFENSE, SEX AND AGE

Of the 47 executed in 1962, one was a woman—the first to be executed in this country since 1967—executed for murder in California. Of the 46 males executed, 40 were for murder, 4 for rape, 1 for assault by a life prisoner (California) and 1 for armed robbery (Texas).

The age of the 47 executed ranged from a 19-year-old executed in Texas for murder to the 58-year-old female executed in California for murder. The median age of the 47 prisoners was 38 years, a drop from the 31.3 median age for the 43 executed in 1961.

ELAPSED TIME FROM FIRST SENTENCE OF DEATH TO EXECUTION

Elapsed time—the period between the first imposition of the death sentence for the instant offense and the day of execution—ranged from 1 month for a robbery offender in Texas to 7 years, 1 month and 20 days for a murderer executed in Illinois. The median elapsed time was 20.5 months which is 4.3 months longer than the 16.2 months recorded in 1961.

Among the prisoners executed in 1962, only 6 (13 percent) of the 47 were received that year. Fourteen (30 percent) were received in 1961, 15 (32 percent) were received in 1960, 8 (17 percent) were received in 1959, 3 (6 percent) in 1958 and 1 (2 percent) in 1955.

There are many reasons for the wide range in elapsed time between the first sentence to death and execution. Appeals which in a few States are automatic following the sentence of the court are made at all levels of the State courts as well as the Federal courts. These together with judicial and executive orders which grant short or long stays or reprieves account for the variation in elapsed time periods.

PRISONERS SENTENCED TO DEATH IN 1962

During calendar year 1962, a total of 99 prisoners received death sentences, 37 less than were reported in 1961. Of the 99, 86 (87 percent) were convicted for murder, 11 (11 percent) for rape and 1 (1 percent) each for armed robbery and assault committed by a life prisoner. All were males, excepting one female convicted of murder in Florida.

At calendar year's end, 87 (88 percent) were still under the sentence of death, 6 (6 percent) had been executed and 6 (6 percent) had their cases disposed of by means other than execution—3 were commuted to life, 2 were granted new trials and 1 had his sentence reversed by the Circuit Court of Appeals.

PRISONERS UNDER SENTENCE OF DEATH AT CLOSE OF 1962

At the beginning of 1962, there were 273 prisoners under sentence of death. By including the 99 received from court during the year, the grand total of prisoners under sentence of death sometime during the

FIGURE A.—MOVEMENT OF PRISONERS UNDER SENTENCE OF DEATH BY OFFENSE, 1962

Offense	Reported under sentence of death in 1-1-62	Received from court during 1962	Executed		Other disposition not resulting in execution*	Reported under sentence of death 12-31-62	
			Present 1-1-62	Received in 1962		Total	Prior year
Total	271	99	41	6	27	267	180
Murder	214	66	37	4	16	216	139
Rape	52	11	3	1	1	46	37
Robbery	2	1	-	-	-	2	-
Kidnaping	3	-	-	-	-	3	3
Assault by life prisoners	1	1	1	-	-	1	1
Burglary	1	-	-	-	-	1	-

* Six prisoners received in 1962 - 5 for murder and 1 for rape. Three were committed to life (includes the rapist), two were granted new trials and one had his sentence reversed by the Circuit Court of Appeals.

(a) Seventeen committed to life, one committed in 1953 committed to 199 years, three committed in 1959 committed to 20 years, five committed in 1960 - 4 committed to 99 years and one to 80 years, one committed in 1961 committed to 99 years.

(b) Reversals of judgment, vacated sentences and grants for new trials. Also includes one received in 1959 who committed suicide.

year was 372. Of these 372, 47 were executed during the year and 58 cases were disposed of by means other than execution, leaving a total of 267 awaiting execution at year's end. Thus, there were six less prisoners awaiting execution at the end of 1962 than at year's end 1961 since 99 were received and 105 were disposed of during the year.

Of the 267 awaiting execution at year's end, 216 were "under sentence of death" for murder, 46 for rape, 3 for kidnapping (1 Federal and 2 from New Hampshire), 1 for assault by a life prisoner (California), and 1 for burglary (Alabama).

Over half (52 percent) of the prisoners awaiting execution were distributed among five States—Florida had 38 awaiting, California had 35, Louisiana had 27, Maryland had 22 and New York had 18.

The age of those awaiting execution ranged from a 16-year-old committed for murder in Florida to a 61-year-old murderer in New Jersey. One 17-year-old murderer was awaiting in Georgia, one 18-year-old murderer in Florida, and four 19-year-old murderers—one each in Arkansas, Kansas, New Jersey and South Carolina.

The longest period of elapsed time recorded for those awaiting execution was 9 years, 10 months and 4 days for two prisoners committed for aggravated rape in Louisiana. Elapsed time is figured from date of sentence to 12-31-62. The median elapsed time for the total group was 16.7 months.

OTHER DISPOSITION NOT RESULTING IN EXECUTION

There were 58 prisoners disposed of by means other than execution in 1962. This indicates that 23 percent more "other dispositions" occurred than executions in 1962. Of these 58, 27 had their sentences commuted—17 to life, 1 to 199 years, 5 to 99 years, 1 to 80 years and 3 to 20 years. Four of the 59 were committed or transferred to mental hospitals and, of the remaining 27, 26 had their death sentence reversed or vacated by the courts (many were retried and resentenced) and 1 committed suicide.

Of this group, 43 (74 percent) had been sentenced for murder, 13 (22 percent) had been sentenced for rape and 2 (3 percent) had been sentenced for armed robbery. The elapsed time from sentence of death to disposition ranged from 27 days for a rapist commuted to life in Texas to 9 years, 1 month and 13 days for a murderer commuted to 199 years in Illinois. The median elapsed time for the group was 16.8 months.

MILITARY EXECUTIONS

Excluded from this report are executions carried out by the armed forces. For the 33 year period,

1930 through 1962, the Army (including Air Force) carried out 160 executions, 148 of these during the period 1942-1950, three each in 1954, 1955 and 1957 and one each in 1958, 1959 and 1961. Of the 160 executions, 106 were for murder (including 21 involving rape), 53 were for rape and 1 was for desertion. The Navy has carried out no executions since 1849.

FIGURE B.—COMPARISON OF PRISONERS EXECUTED IN 1962, DISPOSED OF BY OTHER MEANS IN 1962 AND UNDER SENTENCE OF DEATH DECEMBER 31, 1962

(Figures in parentheses show number of females included)

Item	Executed in 1962	Other disposition 1962	Under sentence of death Dec. 31, 1962
Total	(1) 47	58	(2) 267
Age (in years)			
Median age	28.0	27.3	30.1
16 to 19	1	10	(1) 56
20 to 24	13	18	(1) 66
25 to 29	16	10	55
30 to 34	5	9	58
35 to 39	10	10	(1) 15
40 to 44	1	2	8
45 to 49	1	2	1
50 and over	1	1	1
Unknown	-	-	-
Marital status			
Single	20	27	112
Married	16	21	(1) 90
Separated	4	2	17
Divorced	4	4	20
Widowed	-	-	10
Common-law	-	-	2
Unknown	1	4	16
Offense			
Murder	(1) 41	43	(2) 216
Rape	4	13	46
Robbery	1	2	-
Kidnaping	-	-	3
Burglary	-	-	3
Assault by life prisoners	1	-	1
Elapsed time (in months)			
Median	20.5	16.6	16.7
3 and under	1	4	27
4 to 6	1	11	24
7 to 12	3	20	43
13 to 18	11	7	28
19 to 24	6	6	47
25 to 34	11	3	20
35 to 44	5	3	8
45 to 54	2	1	5
55 to 64	-	1	3
65 to 74	1	-	1
75 to 84	-	-	3
85 to 94	-	-	-
95 and over	-	-	-
Year first received under sentence of death			
1951	-	1	3
1952	-	-	-
1953	-	-	-
1954	-	-	-
1955	-	-	-
1956	-	-	-
1957	-	-	-
1958	-	-	-
1959	-	-	-
1960	-	-	-
1961	-	-	-
1962	(1) 12	11	(1) 27

TABLE 1.--PRISONERS EXECUTED UNDER CIVIL AUTHORITY IN THE UNITED STATES, BY RACE AND OFFENSE, 1930 TO 1962

(The figures in parentheses show the number of females. For years 1930-1959 excludes Alaska and Hawaii except for two Federal executions in Alaska, one in 1948 and one in 1950. For coverage see table 3.)

Year	All offenses				Murder				Rape				Other offenses (a)		
	Total	White	Negro	Other	Total	White	Negro	Other	Total	White	Negro	Other	Total	White	Negro
All years.....	3,812	1,722	2,049	41	3,898	1,640	1,619	39	446	45	399	2	68	37	31
Percent.....	100.0	-	-	-	86.5	-	-	-	11.7	-	-	-	1.8	-	-
Percent.....	100.0	45.2	53.7	1.1	100.0	49.7	49.1	1.2	100.0	10.1	89.5	0.4	100.0	94.4	45.6
1962.....	47	28	19	-	(1) 41	(1) 26	15	-	4	2	2	-	2	1	1
1961.....	42	20	22	-	(1) 33	(1) 18	15	-	6	1	5	-	1	1	1
1960.....	56	21	35	-	44	18	26	-	8	1	7	-	1	1	1
1959.....	49	16	33	-	41	15	26	-	8	1	7	-	1	1	1
1958.....	49	20	29	-	41	15	26	-	7	1	6	-	1	1	1
1957.....	65	34	31	-	(1) 54	(1) 30	24	-	10	2	8	-	1	1	1
1956.....	65	21	43	-	(1) 52	(1) 31	21	-	12	1	11	-	1	1	1
1955.....	76	44	32	-	(1) 65	(1) 41	24	-	12	1	11	-	1	1	1
1954.....	61	36	25	-	(1) 52	(1) 37	15	-	9	1	8	-	1	1	1
1953.....	60	30	30	-	(1) 51	(1) 35	16	-	12	1	11	-	1	1	1
1952.....	81	36	45	-	(1) 71	(1) 45	26	-	13	1	12	-	1	1	1
1951.....	105	57	47	-	(1) 67	(1) 36	31	-	13	1	12	-	1	1	1
1950.....	62	30	32	-	(1) 68	(1) 36	32	-	13	1	12	-	1	1	1
1949.....	119	50	67	-	107	49	58	-	10	1	9	-	1	1	1
1948.....	119	55	62	-	95	42	53	-	20	2	18	-	2	1	1
1947.....	153	62	89	-	(2) 129	(1) 61	68	-	21	2	19	-	2	1	1
1946.....	131	46	84	-	(1) 107	(1) 45	62	-	22	2	20	-	2	1	1
1945.....	117	41	75	-	(1) 90	(1) 52	38	-	26	2	24	-	2	1	1
1944.....	120	47	73	-	(1) 96	(1) 54	42	-	24	2	22	-	2	1	1
1943.....	131	54	77	-	(1) 118	(1) 63	55	-	13	1	12	-	1	1	1
1942.....	147	67	80	-	(1) 116	(1) 57	59	-	24	2	22	-	2	1	1
1941.....	123	59	63	-	(1) 102	(1) 55	47	-	20	1	19	-	1	1	1
1940.....	124	49	75	-	105	44	61	-	15	1	14	-	1	1	1
1939.....	159	80	77	-	144	79	65	-	12	1	11	-	1	1	1
1938.....	190	96	92	-	(2) 155	(2) 90	65	-	12	1	11	-	1	1	1
1937.....	147	69	74	-	(1) 133	(1) 67	66	-	13	1	12	-	1	1	1
1936.....	195	92	101	-	(1) 161	(1) 86	75	-	10	1	9	-	1	1	1
1935.....	199	119	77	-	(1) 181	(1) 93	88	-	10	1	9	-	1	1	1
1934.....	168	65	102	-	(1) 104	(1) 54	50	-	13	1	12	-	1	1	1
1933.....	160	77	81	-	(1) 154	(1) 84	70	-	13	1	12	-	1	1	1
1932.....	140	62	77	-	151	75	76	-	14	1	13	-	1	1	1
1931.....	153	75	77	-	128	(1) 76	52	-	14	1	13	-	1	1	1
1930.....	155	90	65	-	(1) 147	(1) 90	57	-	15	1	14	-	1	1	1

(a) 24 armed robbery, 19 kidnapping, 11 burglary, 8 espionage (6 in 1942 and 2 in 1953), 6 aggravated assault.

TABLE 2.--PRISONERS EXECUTED UNDER CIVIL AUTHORITY IN THE UNITED STATES, BY AGE, RACE, OFFENSE, AND STATE: 1962

(The figures in parentheses show the included executions for rape. All others were for murder except one robbery with firearms (R) in Texas and one assault by life convict (A) in California.)

State and race	All ages	19 years only	20 to 24 years	25 to 29 years	30 to 34 years	35 to 44 years	45 and over
Total.....	47	1	13	6	5	10	2
White....	28	1	9	16	3	5	2
Negro....	19	-	4	7	2	5	-
Alabama:	1	-	-	-	-	-	-
California:	8	-	2	-	-	1	-
Colorado:	3	-	1	-	-	-	-
Florida:	2	-	1	-	-	-	-
Georgia:	2	-	1	-	-	-	-
Iowa:	3	-	1	-	-	-	-
Illinois:	1	-	1	-	-	-	-
Kansas:	1	-	1	-	-	-	-
Kentucky:	1	-	1	-	-	-	-
Mississippi:	1	-	1	-	-	-	-
New Jersey:	1	-	1	-	-	-	-
Ohio:	1	-	1	-	-	-	-
Oklahoma:	1	-	1	-	-	-	-
Oregon:	1	-	1	-	-	-	-
Pennsylvania:	1	-	1	-	-	-	-
South Carolina:	1	-	1	-	-	-	-
Texas:	1	-	1	-	-	-	-
Virginia:	1	-	1	-	-	-	-

(Method of Execution in 1962: 1-Electrocution, 2-Lethal Gas, 3-Hanging, 4-Shooting or hanging. For years 1930-1959, excludes Alaska and Hawaii except for two Federal executions in Alaska, one in 1948 and one in 1950)

Region and State	Total	1962	1961	1960	1959	1958	1957	1956	1955	1950-54	1945-49	1940-44	1935-39	1930-34
United States.....	3012	47	42	56	49	49	65	65	76	413	639	645	890	776
Federal(a).....	31	-	-	-	-	-	2	1	-	6	6	7	8	1
NORTHWEST.....	605	4	3	7	9	4	4	9	25	56	74	110	145	155
New England:														
Maine(b).....	11	1	1	1	1	1	1	1	1	1	1	1	1	1
New Hampshire.....	4	-	-	-	-	-	-	-	-	-	-	-	-	-
Vermont.....	27	-	-	-	-	-	-	-	-	-	-	-	-	-
Massachusetts.....	11	-	-	-	-	-	-	-	-	-	-	-	-	-
Rhode Island(b).....	21	-	-	-	-	-	-	-	-	-	-	-	-	-
Connecticut.....	21	-	-	-	-	-	-	-	-	-	-	-	-	-
Middle Atlantic:														
New York.....	327	-	2	6	4	4	4	6	7	27	36	78	73	80
New Jersey.....	73	2	-	-	-	-	-	1	8	8	6	6	16	24
Pennsylvania.....	152	2	1	-	3	-	-	2	7	19	21	15	41	41
MIDWEST.....	393	7	2	2	2	7	2	4	1	42	64	42	113	105
East North Central:														
Ohio.....	170	2	1	2	1	6	1	4	-	20	36	15	39	43
Indiana.....	41	-	-	-	-	-	-	-	-	2	5	2	20	11
Illinois.....	90	2	-	-	-	1	-	-	-	8	5	13	27	34
Michigan(b).....	11	1	1	1	1	1	1	1	1	1	1	1	1	1
Wisconsin(b).....	11	1	1	1	1	1	1	1	1	1	1	1	1	1
West North Central:														
Minnesota(b).....	18	2	-	-	-	-	-	-	-	-	-	-	-	-
Iowa.....	58	1	-	-	-	-	-	-	-	-	-	-	-	-
Missouri.....	11	1	1	1	1	1	1	1	1	1	1	1	1	1
North Dakota(b).....	1	-	-	-	-	-	-	-	-	-	-	-	-	-
South Dakota(c).....	4	-	-	-	-	-	-	-	-	-	-	-	-	-
Nebraska.....	11	1	-	-	-	-	-	-	-	-	-	-	-	-
Kansas(c).....	11	1	-	-	-	-	-	-	-	-	-	-	-	-
SOUTH.....	2,282	22	26	32	31	29	44	41	38	244	419	411	524	419
South Atlantic:														
Delaware(c).....	12	-	-	-	-	-	-	-	-	-	-	-	-	-
Maryland.....	68	-	-	-	-	-	-	-	-	-	-	-	-	-
District of Columbia.....	40	-	-	-	-	-	-	-	-	-	-	-	-	-
Virginia.....	92	1	4	1	1	3	2	1	1	13	22	13	20	15
West Virginia.....	40	-	-	-	-	-	-	-	-	-	-	-	-	-
North Carolina.....	263	2	1	1	1	2	1	1	1	16	29	50	60	51
South Carolina.....	362	1	3	6	4	6	14	6	4	51	72	32	30	37
Georgia.....	167	5	2	2	10	3	3	7	4	22	27	38	29	15
Florida.....	103	1	-	-	-	-	-	-	-	-	-	-	-	-
East South Central:														
Kentucky.....	93	1	-	-	-	-	-	-	-	-	-	-	-	-
Tennessee.....	133	1	1	1	2	1	2	1	-	14	21	19	31	16
Alabama.....	151	1	5	1	-	3	2	8	8	15	26	34	41	19
Mississippi.....	117	-	-	-	-	-	-	-	-	-	-	-	-	-
West South Central:														
Arkansas.....	133	-	-	-	-	-	-	-	-	-	-	-	-	-
Louisiana.....	58	1	-	-	-	-	-	-	-	-	-	-	-	-
Oklahoma.....	288	9	3	8	3	6	5	7	4	49	36	6	9	25
Texas.....	501	14	11	15	7	9	13	10	12	65	76	71	100	96
WEST.....	6	-	-	-	-	-	-	-	-	-	-	-	-	-
Mountain:														
Montana.....	3	-	-	-	-	-	-	-	-	-	-	-	-	-
Idaho.....	45	2	1	1	-	-	-	-	-	-	-	-	-	-
Wyoming.....	36	-	-	-	-	-	-	-	-	-	-	-	-	-
Colorado.....	13	-	-	-	-	-	-	-	-	-	-	-	-	-
New Mexico.....	29	-	-	-	-	-	-	-	-	-	-	-	-	-
Arizona.....	46	-	-	-	-	-	-	-	-	-	-	-	-	-
Utah.....	19	1	1	1	1	1	1	1	1	1	1	1	1	1
Nevada.....	29	-	-	-	-	-	-	-	-	-	-	-	-	-
Pacific:														
Washington.....	46	-	-	-	-	-	-	-	-	-	-	-	-	-
Oregon.....	19	1	-	-	-	-	-	-	-	-	-	-	-	-
California.....	290	11	8	9	6	6	9	5	9	39	35	35	57	51
Alaska.....	11	1	1	1	1	1	1	1	1	1	1	1	1	1
Hawaii.....	11	1	1	1	1	1	1	1	1	1	1	1	1	1

- (a) Carried out in the following States: 1957: Georgia (2); 1956: Missouri (2); 1955: Missouri (2); New York (2); 1950: Alaska; 1949: Alaska; 1948: Alaska; 1947: Alaska; 1946: Alaska; 1945: Wyoming; 1944: Tennessee; 1943: District of Columbia (6); 1938: Indiana, Illinois, Michigan, Kansas (2); 1936: Indiana, Oklahoma, Arizona; 1930: Kansas. The 3 in Kansas and the 1 in Michigan were carried out in Federal prisons; the others, in State, territorial, or local facilities.
- (b) Death penalty illegal as indicated (11), except that Michigan and North Dakota prescribe the death penalty for treason; North Dakota also permits the death penalty for first-degree murder committed by a prisoner serving a life sentence for first-degree murder; and Rhode Island makes the death penalty mandatory for murder committed by a prisoner serving a life sentence.
- (c) Death penalty illegal: South Dakota, 1930-1938; Kansas, 1930-1934; and Delaware beginning April 2, 1958, to December 18, 1961.
- (d) Alaska and Hawaii when territories abolished capital punishment in 1957. As States, Alaska and Hawaii are included in this series beginning January 1, 1960.

(c) American Indian (O).
(c) Japanese.
(c) Death penalty illegal during entire period, except as explained in Table 3, footnote (b).
(c) 1 Chinese, 1 Filipino, 1 American Indian.
(c) 1 Chinese, 1 American Indian, 1 Filipino.
(c) Chinese.
(c) Death penalty illegal: South Dakota, 1930-1936; Kansas, 1930-1936; and Delaware beginning April 2, 1936 to December 12, 1941.

Employment.

(1) In prior reports femininity was erroneously reported to have amounted to 1 female.

(2) Alaska, includes 1 female previously counted as a male.

(3) Japanese.

(4) 1 American Indian, 2 Chinese.

(5) 11 Filipinos, 3 Chinese, 1 Japanese, 3 American Indians.

(6) Aggravated assault committed by prisoners under life sentence.

(7) Alaska and Hawaii when territories abolished capital punishment in 1957.

(8) As States Alaska and Hawaii are included in this series beginning January 1, 1958.

TABLE 5.—MOVEMENT OF PRISONERS UNDER SENTENCE OF DEATH BY STATE AND OFFENSE, 1962
(Figures in parentheses show the number of females included)

(a) in a few states because of automatic appeals, as well as appeals by the defendant, prisoners sentenced to death are not immediately transferred to the place of execution. Therefore, the number of prisoners under sentence of death January 1, 1962 is higher than recorded at the close of 1961.

(b) Includes prisoners reported with appeals or other judicial or executive action pending. Includes prisoners granted new trials.

(c) All committed to life with the following exceptions: Illinois - 1 committed to 199 years; South Carolina - 1 committed to 80 years; Georgia - 3 committed to 20 years; Tennessee - 5 committed to 99 years.

(d) Reversals of judgment or vacated sentences. Also includes grants for new trials.

(e) Kidnaping and murder.

(f) Death penalty illegal as indicated (X), except that Michigan and North Dakota prescribe the death penalty for treason; North Dakota also permits the death penalty for first-degree murder committed by a prisoner serving a life sentence for first-degree murder; and Rhode Island makes the death penalty mandatory for murder committed by a prisoner serving a life sentence.

(g) Death sentences reinstated December 18, 1961.

(h) Suicide.

(i) Solitary.

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[fol. 387] Acknowledgment of Service (omitted in printing.)

[fol. 388] JUDGE'S CERTIFICATE

I hereby certify that exhibits 1, 2, 3, 4, and 19 are true, correct, and complete copies of originals which were introduced and received into evidence on the trial of the non-jury proceedings on defendant's special pleas and motions as had before me in the above-captioned case, commencing on October 7, 1964, and the same are approved as a part of the record herein.

I hereby certify that exhibits 5 through 18 and exhibit 20 are true, correct, and complete copies of originals which were identified and tendered but ruled inadmissible on the trial of the non-jury proceedings on the defendant's special pleas and motions as had before me in the above-captioned case, commencing on October 7, 1964, and the same are approved as a part of the record herein.

This, the 15 day of January, 1965.

Ben Hodges, Judge, Charlton Superior Court, Waycross Judicial Circuit.

[fol. 389] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA

October Term, 1964

No. 1488

[Title omitted]

CHARGE OF THE COURT—January 7, 1965

Gentlemen of the jury, the grand jury at the October term, 1964, of Charlton County Superior Court returned the following indictment: "Georgia, Charlton County. In the Superior Court of said County. The grand jurors selected, chosen and sworn for the County of Charlton, to wit: (Now, here the grand jurors are named. I am not going to read the names of those grand jurors to you.) in the name and behalf of the citizens of Georgia charge and accuse Isaac Sims, Jr., with the offense of rape, for that the said Isaac Sims, Jr., on the 13th day of April in the year 1963, in the County aforesaid, did then and there unlawfully and with force and arms did make an assault on the person of Nola Jean Roberts, and did strike, beat, and choke and wound her, and did have carnal knowledge of and sexual intercourse with the said Nola Jean Roberts, a female, forcibly and against her will, contrary to the laws of said State, the good order, peace and dignity thereof. Charlton Superior Court, October term, 1964."

Now, Gentlemen, you will have this indictment out with you. It is not evidence in the case, but you may refer to it for a more complete statement and understanding of the contentions of the State.

Now, to this indictment, gentlemen, the defendant, Isaac Sims, Jr., has entered his plea of not guilty, and by pleading not guilty he places on the State the burden of proving all the material allegations of the indictment to your satisfaction [fol. 390] to a moral and reasonable certainty and beyond a reasonable doubt.

The contentions of the State as set out and alleged in the indictment and the defendant's plea of not guilty make the

issue you are called upon to try and determine in this case.

The defendant enters upon the trial of the case with the presumption of innocence in his favor, and this presumption remains with him throughout the trial of the case, and until and unless the State shall overcome and remove it by the introduction of testimony in your presence and hearing sufficient to convince your minds beyond a reasonable doubt of the guilt of the accused.

A reasonable doubt, gentlemen, is a doubt for which you could give a reason, and means just what it says. It is a doubt of a fair minded, impartial juror honestly seeking the truth; not an arbitrary or capricious doubt, but a doubt arising from a consideration of the evidence, or from a lack of evidence, or from a conflict of evidence, or from the statement of the defendant.

If, after considering all the facts and circumstances of the case, giving the defendant's statement just such weight and credit as you think it is entitled to receive, your minds are wavering, unsettled, and unsatisfied, then that is the doubt of the law, and you should acquit; but if such doubt does not exist in your minds as to the guilt of the defendant, then you should convict.

You are made by law the exclusive judges as to the credibility of witnesses. In passing upon their credibility you may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their interest or want of interest, their means and opportunity for knowing the facts to which they testify, the nature [fol. 391] of the facts to which they testify, the probability or improbability of their testimony, and also their personal credibility in so far as the same may legitimately appear upon the trial of the case.

Now, gentlemen, the defendant is allowed to make to the Court and jury just such statement in his own behalf as he sees fit. He may make a sworn statement or he may make an unsworn statement. If he makes an unsworn statement he is not subject to cross examination, and you are authorized to give it such weight and credit only as you think it is entitled to receive. You may believe it in whole or in part, and you may believe it in preference to the sworn testimony in the case.

I charge you, gentlemen of the jury, the purpose of all legal investigations is the discovery of the truth, seeking always for the highest sources and purest evidence.

I charge you that direct evidence is that which immediately points to the question at issue.

Indirect, or circumstantial, evidence is that which only tends to establish the issue by proof of various facts sustaining by their consistency the hypothesis claimed.

In a civil case the preponderance of the evidence is deemed sufficient, but in criminal cases the law goes one step further and requires a greater of mental conviction to authorize a conviction, and the testimony must be sufficient to satisfy your minds and consciences beyond a reasonable doubt.

I charge you further, gentlemen, that a crime shall consist in a violation of a public law, in the commission of which there shall be a union or joint operation of act and intention.

I charge you further, gentlemen, that when testimony [fol. 392] in the nature of an alleged confession is offered it is for the jury to determine whether or not such alleged confession was, in point of fact, made or not; and if the jury believe there was a confession, then and in that event the following principles of law would govern the jury in determining the weight of such alleged confession:

All admissions shall be scanned with care, and confessions of guilt shall be received with great caution.

A confession alone, uncorroborated by other evidence, will not justify a conviction.

To make a confession admissible it must have been made freely and voluntarily, without being induced by another by the slightest hope of benefit or the remotest fear of injury.

If the jury should believe that a confession was induced by another by the slightest hope of benefit or the remotest fear of injury, then and in that event, gentlemen, it would be the duty of the jury to disregard that testimony.

The amount of corroboration to a confession which has been freely and voluntarily made to authorize a conviction on such confession is a question for the jury.

Gentlemen of the jury, the charge in the indictment is

rape. Rape is the carnal knowledge of a female forcibly and against her will.

In other words, gentlemen, the defendant is charged with having had sexual intercourse with the female named in the indictment forcibly and against her will.

The State must prove, gentlemen, beyond a reasonable doubt that there was a penetration of the female organ of generation, or private parts of the female, by the male organ of generation, or the private parts of the male.

[fol. 393] It is sufficient to constitute the act of intercourse whether the penetration be slight or great, but there must be a penetration.

I charge you further, gentlemen, that the State must likewise prove that the carnal knowledge, if any, or sexual intercourse, if any, was accomplished by force and against the will and without the consent of the female alleged to have been raped.

I charge you, gentlemen, that force is an element of the crime of rape, but it may be exerted not only by violence, but also by threats of serious bodily harm which overpowers the female and causes her to yield against her will.

Gentlemen, the testimony of a single witness is generally sufficient to establish a fact, but there are certain exceptions to this rule, and this case presents one of those exceptions, it being the law that the jury could not convict the defendant of the offense for which he is on trial upon the unsupported testimony of the female alleged to have been raped. Before you would be authorized to convict the defendant there must be other evidence, independent of hers, sufficient to connect the accused with the offense charged; and all the evidence, taken together, must convince your minds beyond a reasonable doubt of the guilt of the accused.

It is for you to determine whether the female alleged to have been raped has been so corroborated or not.

It is not necessary that the corroborating evidence, if any, should be of itself sufficient to show the defendant's guilt beyond a reasonable doubt. The jury would be authorized to convict the defendant if they are satisfied of his guilt beyond a reasonable doubt from all the evidence, that [fol. 394] of the female alleged to have been raped, and the corroborating evidence, if any, taken and considered together.

Now, gentlemen, if you believe beyond a reasonable doubt that this defendant, at any time prior to the finding and return of this indictment into open court by the grand jury of this county, did have carnal knowledge of, or sexual intercourse with, the female alleged to have been raped: that it was accomplished by force and against her will and without her consent, you would be authorized and it would be your duty to convict him. Otherwise, not.

I charge you, gentlemen, that the crime of rape shall be punished by death, unless the jury recommends mercy, in which event punishment shall be imprisonment for life; provided, however, that the jury in all cases may fix the punishment by imprisonment and labor in the penitentiary for not less than one nor more than twenty years.

Gentlemen of the jury, if you should believe beyond a reasonable doubt under the rules of law that I have given you in charge and all the facts and circumstances of the case that the defendant is guilty, the form of your verdict would be, "We, the jury, find the defendant guilty." Now, gentlemen, that form of your verdict would carry the death penalty.

In the event you find the defendant guilty you would have the right to recommend him to the mercy of the Court, and in that event the form of your verdict would be, "We, the jury, find the defendant guilty, and recommend him to the mercy of the Court."

Now, gentlemen, that form of your verdict would carry punishment by imprisonment in the penitentiary for life. [fol. 395] And then, gentlemen, in the event you find the defendant guilty you may fix his punishment at not less than so many years, which could not be less than one, and not more than so many years, which could not be more than twenty, just since the minimum is not less than one and the maximum not more than twenty. For illustration, and for illustration only, you could fix his punishment at ten years, or five years, or twenty years, or at one year, or seven years, just any figure between one and twenty years.

Now, gentlemen of the jury, the defendant has entered his plea of not guilty, and in so doing places the burden upon the State to prove his guilt to your satisfaction and beyond a reasonable doubt.

If you should believe the defendant is not guilty, or if you

should not believe him guilty beyond a reasonable doubt, it will be your duty to acquit him, and in the event you acquit the defendant the form of your verdict will be, "We, the jury, find the defendant not guilty."

Now, gentlemen of the jury, as I said before, you will have this indictment out with you, and whatever your verdict is, let it be written on this indictment, signed by one of your number as foreman, dated, and returned into court.

You may retire and consider your verdict.

The within and foregoing charge of the Court is hereby approved as true and correct, and is ordered filed as a part of the record in the case herein stated.

At Chambers, Waycross, Georgia, this 7 day of January, 1965.

Ben Hodges Judge, Superior Courts, Waycross Judicial Circuit.

[fol. 396] [File endorsement omitted.]

[fol. 397] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA

SENTENCE OF THE COURT OCTOBER 8, 1964

STATE OF GEORGIA,
County of Charlton:

Whereupon, the jury having found the defendant, Isaac Sims, Jr. guilty of the offense of Rape, without a recommendation of mercy, it is considered, sentenced and adjudged by the court that said defendant be carried from the bar of this court to the common jail of Charlton County, Georgia, and there held in safe-keeping until called for by a guard from the State Board of Penal Administration who shall carry him from said jail to the Penal Institution designated by said Board, and there held as provided by law until the 10th day of November, 1964 (not less than 30 nor more than 60 days from date) at which time he shall be electrocuted at said Penal Institution as provided by law.

Granted in open, court, this 8th day of October, 1964.

Ben Hodges J.S.C. Charlton County, Georgia Way-
cross Judicial Circuit.

[fol. 398] IN THE SUPERIOR COURT OF CHARLTON COUNTY,
GEORGIA

No. 1488

[Title omitted]

ORDER DENYING MOTION FOR NEW TRIAL, AS AMENDED—
January 15, 1965

The above and foregoing captioned case coming on for hearing before me on the defendant's motion for new trial, as amended and after hearing arguments of counsel,

It Is Hereby Ordered That said motion for new trial, as amended, and each ground thereof be, and is hereby overruled and denied.

This 15th day of January, 1965.

Ben Hodges Judge, Charlton Superior Court, Waycross Judicial Circuit.

[File endorsement omitted.]

[fols. 399-401] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 402] IN THE SUPREME COURT OF GEORGIA

No. 22939

Case No. 1488

IN CHARLTON SUPERIOR COURT, WAYCROSS JUDICIAL CIRCUIT

ISAAC SIMS, JR., Plaintiff-in-Error,

vs.

THE STATE OF GEORGIA, Defendant-in-Error

BILL OF EXCEPTIONS—Filed March 19, 1965

GEORGIA, CHARLTON COUNTY.

To the Honorable Chief Justice and the Honorable Associate Justices of the Supreme Court of Georgia:

Be It Remembered That on the 6th day of October, 1964, at the regular October Term, 1964, of the Superior Court of Charlton County, the Grand Jury thereof returned an indictment (No. 1488) against the plaintiff-in-error, charging him with a violation of Title 26, Georgia Code Annotated, Section 1301, a capital felony.

On the 7th day of October, 1964, said indictment came on to be tried before a traverse jury of the said court, the Honorable Ben Hodges, Judge, Charlton Superior Court, Waycross Judicial Circuit, presiding. On the 8th day of October, 1964, the said jury returned a verdict of guilty as charged. Pursuant thereto, the Honorable Ben Hodges sentenced the plaintiff-in-error to death by electrocution in the Georgia State Prison at Reidsville, Georgia, on a day certain.

Following conviction and sentencing, the plaintiff-in-error, on October 8, 1964, filed a skeleton motion for new trial. Pursuant to the motion, a show cause order was allowed and set down for hearing on December 15, 1964, and [fol. 403] thereafter continued on motion of counsel for the plaintiff-in-error. Imposition of sentence was stayed and plaintiff-in-error was lodged in the common jail of Ware County, pending further post-conviction proceedings.

On January 15, 1965, the plaintiff-in-error amended his previously filed skeleton motion for new trial. The Court thereupon approved the recitals of fact in the several grounds of the amended motion for new trial and ordered the same filed.

Be It Further Remembered That on the 15th day of January, 1965, the Honorable Ben Hodges entered the following order overruling and denying the motion for new trial, as amended, to-wit:

"Order

The above and foregoing captioned case coming on for hearing before me on the defendant's motion for new trial, as amended and after hearing arguments of counsel,

It Is Hereby Ordered That said motion for new trial, as amended, and each ground thereof be, and is hereby overruled and denied.

This 15th day of January, 1965.

/s/ Ben Hodges, Judge, Charlton Superior Court,
Waycross Judicial Circuit."

Be It Further Remembered That to the order and judgment of the trial court overruling his motion for new trial, as amended, the defendant, the plaintiff-in-error, then and there excepted and now excepts and assigns the same as error thereon as being contrary to law, contrary to the evidence and contrary to the principles of justice and [fol. 404] equity, and the respective provisions of the State and Federal Constitutions specified in the several grounds thereof, on each and all grounds of said motion for new trial, as amended. Each and every ground of said motion for new trial, as amended, and the rulings thereon are incorporated herein by reference and plaintiff-in-error specifically assigns error upon the respective rulings on each ground of the said motion for new trial, as amended, upon the grounds hereinabove stated.

Be It Further Remembered That to the order and judgment of the trial court overruling his plea in abatement, challenging the legality of the composition of the grand jury which indicted him, the plaintiff-in-error then and

there excepted, now excepts and assigns error thereon as being contrary to law and contrary and in violation of the following provisions of the State and Federal Constitutions, to-wit:

Due process of law and equal protection clauses of the Fourteenth Amendment, United States Constitution, and Article I, paragraph 3 of the Constitution of the State of Georgia of 1945; in that, so plaintiff in error contends, for a period of many years, Negroes have been systematically excluded from service on grand juries in Charlton County and that a Negro was because of his race or color illegally included on the grand jury which indicted the plaintiff-in-error; that the Court erroneously excluded evidence offered by the plaintiff-in-error to show that for a period of many years Negroes had been arbitrarily and systematically excluded from service on grand juries in and for Charlton County; and that the names of persons selected for service upon the grand jury of said county are taken from the jury lists of said county which are in turn compiled by the all-white court-appointed jury commissioners from the tax digests which are maintained and arranged on the basis of race or color, as contended by plaintiff-in-error.

[fol. 405] Be It Further Remembered That to the order and judgment of the trial court overruling his challenge to the array, challenging the legality of the composition of the venire from which the traverse jury which tried him was drawn, the plaintiff-in-error then and there excepted, now excepts and assigns error thereon as being contrary to law and contrary to and in violation of the equal protection and due process of law clauses of the Fourteenth Amendment, United States Constitution and Article I, paragraphs 3 and 25, Constitution of the State of Georgia of 1945; in that:

(a) The plaintiff-in-error contends that he made out an uncontraverted case that the statutory devised system and procedure for compiling the jury lists in Charlton County, Georgia, independent of any other facets and aspects of the discriminatory system, operates to cause eligible Negro jurors to be systematically and arbitrarily excluded or included from service on or upon said jury lists;

(b) The six white court-appointed jury commissioners, the plaintiff-in-error contends, did not follow a course of conduct in compiling the jury lists which did not work to

arbitrarily and systematically exclude or include qualified Negro jurors because of their race or color;

(c) Qualified Negroes, as plaintiff-in-error contends, have never been selected or appointed as jury commissioners in Charlton County, Georgia;

(d) The Court erroneously, the plaintiff-in-error contends, excluded evidence offered by the plaintiff-in-error which would have shown that for the past ten years members of the Negro race have been systematically excluded or included from service on traverse juries in Charlton County; that, although the names of Negroes appear on such lists, their names are located at the end of such lists [fol. 406] and that their names were placed at the end of the list by design and not as a mere fortuity;

(e) The evidence, the plaintiff-in-error contends, shows that the alleged revised jury lists from which the traverse jurors were drawn which tried and convicted the plaintiff-in-error was not revised according to the laws of Georgia respecting revision of such lists; and

(f) The evidence, the plaintiff-in-error contends, showed that because of their race or color, at least four Negroes, Sol Houston, Vandell Redmond, Norris Mitchell, and Troy Robinson, were systematically and arbitrarily included on the jury list of ninety-nine (99) names from which the jury was drawn which tried and convicted plaintiff-in-error; that, although the names of at least four Negroes appeared on said list the State Prosecutor, without examination, except statutory voir dire question exercised four of his peremptory challenges to strike said Negroes while exercising only five of the State's ten peremptory challenges.

Be It Further Remembered That to the order and judgment of the trial court overruling his motion to suppress illegally obtained evidence the plaintiff-in-error then and there excepted, now excepts and assigns error thereon as being contrary to law and contrary to and in violation of the following provisions of the State and Federal Constitutions; to wit:

Fourth, Fifth, and Sixth Amendments, United States Constitution as made applicable to the State of Georgia by virtue of Section 1, Fourteenth Amendment thereto, and Article I, paragraphs 3 and 5, Constitution of the State of Georgia of 1945; in that, so plaintiff-in-error contends, said

alleged confession was obtained while plaintiff-in-error was without the benefit of counsel and under circumstances and conditions which were greatly coercive, and that plaintiff-in-error did not intelligently and understandingly waive or abandon his right to counsel and did not intelligently and [fol. 407] understandingly sign said confession, as contended by plaintiff-in-error.

Be It Further Remembered That to the order and judgment of the trial court overruling and denying his motion for change of venue, the plaintiff-in-error then and there excepted, now excepts and assigns error thereon as being contrary to law and contrary to and in violation of the following provisions of the State and Federal Constitutions; to-wit:

Due process and equal protection of law clauses of the Fourteenth Amendment, United States Constitution, and Article I, paragraphs 3, 5, and 25 of the Constitution of the State of Georgia of 1945; in that, so plaintiff-in-error contends, circumstances and attitudes of the community were such in Charlton County that plaintiff-in-error could not secure a fair and impartial trial within said county and that with a minimum of delay and inconvenience plaintiff-in-error could have secured a fairer and less partial forum in one of the other counties within the Waycross Judicial Circuit, as contended by plaintiff-in-error.

Be It Further Remembered That to the order and judgment overruling his plea in abatement, assailing the constitutionality of Title 26, Georgia Code Annotated, Section 1302, upon its face and as applied, plaintiff-in-error then and there excepted, now excepts and assigns error thereon as being contrary to law and contrary to and in violation of the following provisions of the State and Federal Constitutions; to-wit:

Eighth Amendment, United States Constitution, and the equal protection and due process of law clauses of Section 1, Fourteenth Amendment, United States Constitution and Article I, paragraphs 3 and 25, Constitution of the State of Georgia of 1945, in that, so plaintiff-in-error contends, Title 26, Georgia Code Annotated, Section 1302, fails to set out any standards by which the jury is to be guided in imposing punishment; and contravenes evolving standards of

decency and inflicts cruel and unusual punishment; is un-[fol. 408] equally applied to the plaintiff-in-error because of his race or color and is a facet and aspect of the pattern and practice of sentencing Negroes to death for rape in furtherance of a racial caste system which finds state sanction in the deeply rooted history, public policy, and attitudes which are prevalent within the State of Georgia and particularly in Charlton County, Georgia; and, the court erroneously excluded evidence offered to sustain said claim, as contended by plaintiff-in-error.

Be It Further Remembered That to the order and judgment of the trial court overruling his motion to quash the indictment plaintiff-in-error then and there excepted, now excepts and assigns error thereon as being contrary to law and contrary to and in violation of the following provisions of the State and Federal Constitutions; to-wit:

Fifth Amendment, United States Constitution as made applicable to the State of Georgia by virtue of Section 1, Fourteenth Amendment, thereto, and Article I, paragraphs 3 and 5 of the Constitution of the State of Georgia of 1945; in that, so plaintiff-in-error contends, plaintiff-in-error was illegally indicted on October 6, 1964, by an illegally composed and revised grand jury of Charlton County and thus placed twice in jeopardy of his life and limb as there was at that time and place another indictment returned by the grand jury of said county which was then and there pending for trial charging the same offense, as contended by plaintiff-in-error.

Plaintiff-in-error further shows that the entering of each of the aforesaid orders and judgments was erroneous, contrary to law, and are final orders which are subject to review.

The plaintiff-in-error herein is designated as ISAAC SIMS, JR., and the defendant in error is hereafter designated as the STATE OF GEORGIA, the prosecutor.

[fol. 409] The plaintiff-in-error specifies the following portions of the record in said case as material to a clear understanding of the errors complained of in this his Bill of Exceptions:

1. Indictment Number 1488 and Verdict thereon.
2. Plea in Abatement filed October 7, 1964, challenging

- the legality of the composition of the grand jury, with the order of the court thereon.
- 3. Challenge to the Array filed October 7, 1964, with the order of the court thereon.
- 4. Motion for Change of Venue filed October 7, 1964, with the order of the court thereon.
- 5. Motion to Suppress Illegally Obtained Evidence filed October 7, 1964, with the order of the court thereon.
- 6. Plea in Abatement filed October 7, 1964, attacking the constitutionality of the statute imposing the mandatory death penalty in rape cases and its application to the instant case, with the order of the court thereon.
- ✓ 7. List of Jurors Present Wednesday, October 7, 1964, in the Superior Court of Charlton County from which the jury which tried and convicted the plaintiff-in-error was drawn.
- 8. Motion for New Trial filed October 8, 1964, and show cause order thereon.
- 9. Amended Motion for New Trial filed January 15, 1965, with the order of the court thereon approving the recitals of facts in the several grounds thereof.
- 10. Transcript of the Evidence taken upon the trial of the special pleas and motions with the Judge's Certificate [fol. 410] dated January 15, 1965.
- 11. Transcript of the Evidence taken on the trial with the Judge's Certificate thereon dated January 15, 1965.
- 12. Transcript of the Documentary Evidence, with the Judge's Certificate thereon dated January 15, 1965.
- 13. Charge of the Court to the Jury, with the Judge's Certificate thereon.
- 14. Sentence of the Court.
- 15. Order and Judgment of the Court overruling the Motion for New Trial, as amended, dated January 15, 1965.
- 16. This Bill of Exceptions.

The entries of the filing of each and all of the parts of the record above-specified to be entered and transmitted in the proper order.

The Supreme Court of Georgia has jurisdiction of this case by virtue of Title 2, Georgia Code Annotated, Section 3704, this being a writ of error assigned upon orders and judgments in a capital felony case and thus within the class

of cases coming within the exclusive jurisdiction of this Court.

And Now, within the time provided by law, comes ISAAC SIMS, JR., plaintiff-in-error, and assigning error on all of the rulings complained of as being contrary to law, tenders this Bill of Exceptions and prays that the same may be certified to as provided by law, and transmitted to the Supreme Court of Georgia in order that the alleged errors may be considered and corrected.

Howard Moore, Jr., William H. Alexander, 859½
Hunter St., N. W., Atlanta, Georgia 30314, Attor-
neys for Plaintiff-in-error.

[fol. 411] PAUPER'S AFFIDAVIT

GEORGIA, WARE COUNTY:

Personally appeared before the undersigned authority, ISAAC SIMS, JR., Plaintiff-in-error, who on oath says that he is unable from his poverty to pay the costs or give security otherwise required, and he is advised by counsel that he has good cause for appeal.

Isaac Sims, Jr.

Subscribed and sworn to before me this 15th day of January, 1965.

Howard Moore, Jr., Notary Public.

My commission expires May 18, 1968.

[fol. 412] WAIVER AND NOTICE OF PRESENTATION

Notice of the time of tender for certification of the within and foregoing Bill of Exceptions is hereby acknowledged, copy received.

This 12th day of February, 1965.

Dewey Hayes, Solicitor General, Waycross Judicial Circuit.

The above Bill of Exceptions tendered this — day of February, 1965.

—, —, Judge, Charlton Superior Court, Waycross Judicial Circuit.

[fol. 413] JUDGE'S CERTIFICATE TO BILL OF EXCEPTIONS

I do hereby certify that the foregoing Bill of Exceptions is true and contains all the evidence, and specifies all of the record material to a clear understanding of the errors complained of; and the Clerk of the Superior Court of Charlton County, Georgia, is hereby ordered to make out a complete copy of the parts of the record in said case as are in the Bill of Exceptions specified and certify the same as such, and cause the same to be transmitted to the Supreme Court of Georgia in order that the errors alleged to have been committed may be considered and corrected.

This 12th day of February, 1965.

Ben Hodges, Judge, Charlton Superior Court, Waycross Judicial Circuit.

[fols. 414-416] Acknowledgement of Service (omitted in printing).

Certificate of Service (omitted in printing).

[fols. 417-418] [File endorsement omitted.]

[fol. 419]

IN THE SUPREME COURT OF GEORGIA

22939

SIMS

v.

THE STATE

OPINION—July 14, 1965

1. (a) The defendant failed to make out a *prima facie* case of invidious discrimination under the Fourteenth Amendment in his challenge to the composition of the grand jury. Jury lists for prior years would not be relevant in the face of a showing that no discrimination existed in the composition of the present juries.

(b) The challenge to the array on the ground that qualified Negroes have never served as jury commissioners in Charlton County is not meritorious.

(c) The provisions of *Code Ann.* §59-106 are directory only, and the failure to strictly comply with them does not violate any rights guaranteed to defendant.

(d) There is no merit in the plea in abatement challenging the composition of the grand and petit juries on the ground that these jurors were selected from tax digests kept on the basis of race.

[fol. 420] (e) The presumption that the prosecutor is utilizing his peremptory challenges to obtain an impartial jury is not overcome by allegations that the prosecutor exercised four of his peremptory challenges to strike Negroes from the jury.

2. The trial judge did not abuse his discretion in overruling the motion for change of venue.

3. It was not error to overrule the plea in abatement challenging the constitutionality of *Code Ann.* §26-1302 on three grounds.

4. "Where several indictments for the same offense are pending against the same person, it is immaterial upon which he is first tried."

5. (a) The evidence was sufficient to support the verdict.

(b) It was not error to admit defendant's confession into

evidence. *Escobedo v. Illinois*, 384 U.S. 97, distinguished.

(c) The trial court having allowed the evidence of the confession to go to the jury since there was no evidence that [fol. 421] it was not voluntary did not thereafter err in leaving to the jury the question of whether or not the defendant's confession was voluntary and in instructing the jury to disregard the confession in the event they should determine that it was not voluntary, particularly since he later approved the verdict of the jury.

(d) Because the jury made no recommendation of mercy, it is unnecessary to determine whether the given charge was error.

6. The ruling made in 5(b) is controlling here.

ARGUED MAY 10, 1965—

DECIDED JULY 14, 1965—

REHEARING DENIED JULY 26, 1965.

Rape. Charlton Superior Court, Before Judge Hodges.

Howard Moore, Jr., Wm. H. Alexander, for plaintiff in error. Dewey Hayes, Solicitor General, Eugene Cook, Attorney General, Rubye G. Jackson, Assistant Attorney General, contra.

[fol. 422] DUCKWORTH, Chief Justice. Issac Sims, Jr., a Negro, was convicted of rape by force in the Superior Court of Charlton County and was sentenced by that court to death by electrocution. (Sim's first conviction for this offense was reversed by this court in *Sims v. Balkcom*, 220 Ga. 7 (136 SE2d 766)). Sim's amended motion for new trial having been overruled, he brings his case to this court for review. Error is assigned on the court's orders overruling the challenge to the array, the motion to suppress illegally obtained evidence, the motion for change of venue, the pleas in abatement, the motion to quash the indictment, and the amended motion for new trial.

1. (a) The first, second and fourth grounds of the challenge to the array and the sole ground to the plea in abatement challenging the composition of the grand jury is that the system for compiling jury lists in Charlton County, Ga., operated to systematically and arbitrarily exclude and include Negroes for jury service. It was shown that the jury lists were compiled from tax digests which were maintained on the basis of race. However, one of the jury commissioners testified that race was not a factor in the compilation of jury lists. No evidence was introduced to contradict his testimony. It was shown that there was one Negro [fol. 423] on the grand jury which indicated defendant and at least five Negroes on the jury list from which the jury who tried defendant was made up. The burden of proof was on the defendant to make out a prima facie case of invidious discrimination under the Fourteenth Amendment. *Swain v. Alabama*, 85 S. Ct. 824, 828. All the defendant showed here, as was done in *Swain v. Alabama*, 85 S. Ct. 824, a recent United States Supreme Court case involving allegations of discrimination in the selection of jurors, is that the percentage of Negroes on the jury list did not reflect the percentage of Negroes in the county. This is not sufficient to show invidious discrimination. As was said in the *Swain* case: "a defendant in a criminal case is not constitutionally entitled to demand a proportionate number of his race on the jury which tries him nor on the venire or jury roll from which petit jurors are drawn." *Swain v. Alabama*, 85 S. Ct. 824, 829.

Under the evidence in this case, the defendant did not make out a prima facie case of invidious discrimination,

and the court did not err in overruling the challenge to the array or the plea in abatement on this ground.

It is also urged that the court erred in excluding certain jury lists which were offered as evidence in connection with [fol. 424] the claims of discrimination against Negro jurors. Jury lists for a ten year period were offered in evidence. All were excluded except for the lists of the jurors from which the juries who indicted and convicted were taken. As mentioned above, there was no showing of discrimination on the juries which indicted and convicted the defendant. This being true, we are of the opinion that the court properly excluded the jury lists for prior years. They would not be relevant in the face of a showing that no discrimination existed in the composition of the present juries.

(b) The third ground of the challenge to the array is that qualified Negroes have never served as jury commissioners in Charlton County. It was stipulated by the parties that no Negroes had served in the last eight years. This contention was decided adversely to defendant in *Avery v. Georgia*, 209 Ga. 116, 122 (70 SE2d 716, 721), reversed on other grounds, 345 U.S. 559, and that decision is controlling here.

(c) The fourth ground of the challenge to the array is that the lists from which the traverse jurors were drawn was revised annually instead of biennially or triennially as required by *Code Ann.* §59-106 (Ga. L. 1955, pp. 247-48). There is no merit in this contention. The provisions of the [fol. 425] Code are directory only, and the failure to strictly comply with them does not violate any rights guaranteed to defendant. *Haden v. State*, 176 Ga. 304 (1) (168 SE 272); *Daugherty v. State*, 59 Ga. App. 898 (2 SE 2d 519).

(d) The ground in the plea in abatement challenging the legal composition of the grand jury and the ground in the plea challenging the legal composition of the petit jury on the ground that the jurors, grand and petit, were taken by the jury commissioners from a list of taxpayers in the tax digests of Charlton County which are kept on the basis of race were properly overruled.

These grounds of the pleas are without merit for two reasons. First *Code* §92-6307 requires county tax receivers to make out separately on the tax digests the names of colored

and white taxpayers. No attack is made on this statute. Secondly, the evidence introduced on the hearing of these pleas shows without dispute that the jury commissioners, in making up the grand and petit jury lists, did so as provided by the laws, and jurors were selected without regard to race or where their names appeared on the tax digests.

(e) The final ground of the challenge to the array is that [fol. 426] four Negroes, because of their race, were systematically included on the jury list and that the State prosecutor exercised four of his peremptory challenges to strike the Negroes. No showing was made that such procedure was customarily followed in order to exclude Negroes from jury service. The decision of the United States Supreme Court in *Swain v. Alabama*, 85 S. Ct. 824, is decisive on this point. It was there held: "We cannot hold that the striking of Negroes in a particular case is a denial of equal protection of the laws. In the quest for an impartial and qualified jury, Negro and white, Protestant and Catholic, are alike subject to being challenged without cause . . . The presumption in any particular case must be that the prosecutor is using the State's challenges to obtain a fair and impartial jury to try the case before the court. The presumption is not overcome and the prosecutor therefore subjected to examination by allegations that in the case at hand all Negroes were removed from the jury or that they were removed because they were Negroes." *Swain v. Alabama*, 85 S. Ct. 824, 836-37. The final ground of the challenge to the array is not meritorious.

The court did not err in overruling the plea in abatement [fol. 427] or the challenge to the array.

2. A motion for change of venue on the ground that defendant could not secure a fair and impartial in Charlton County was overruled by the court. This was not error. None of the evidence introduced by the defendant tended to show that an impartial jury could not be obtained in Charlton County. The ruling of a trial judge on a motion for change of venue will not be disturbed by this court unless an abuse of discretion is shown. *Rawlins v. State*, 124 Ga. 31(2) (52 SE 1); *Coleman v. State*, 141 Ga. 737(1) (82 SE 227). Clearly, the trial judge does not abuse his discretion in overruling the motion when no evidence is introduced to support the allegations of the motion.

3. Defendant's plea in abatement, which challenged the constitutionality of *Code Ann.* §26-1302 (Ga. L. 1960, pp. 266-67) on three grounds was overruled. That Code section provides: "The crime of rape shall be punished by death, unless the jury recommends mercy, in which event punishment shall be imprisonment for life. Provided, however, the jury in all cases may fix the punishment by imprisonment and labor in the penitentiary for not less than one (1) nor more than twenty (20) years." In the plea it [fol. 428] was asserted: (1) the statute does not set out any standards to guide the jury in imposing punishment; (2) the statute imposes cruel and unusual punishment, and (3) the statute is unequally applied to defendant "because of his race and color and is a facet and aspect of the pattern and practice of sentencing Negroes to death for rape in furtherance of a racial caste system which finds state sanction in the deeply rooted history, public policy, and attitudes which are prevalent within the State of Georgia and particularly in Charlton County, Georgia."

The first two grounds of this plea were decided adversely to defendant on the former appearance of the case in this court, *Sims v. Balkcom*, 220 Ga. 7 (136 SE2d 766). That decision is controlling on these grounds and requires no elaboration here.

In the third ground of the plea defendant asserted that Code §26-1302 had been applied to deny persons of the Negro race equal protection of the laws in violation of the Federal and Georgia Constitutions in that since 1930 the State of Georgia has executed 58 Negroes and 3 white persons for the crime of rape. The same contention was raised by the defendant in his habeas corpus proceeding following [fol. 429] his first conviction and decided adversely to him (*Sims v. Balkcom*, 220 Ga. 7, *supra*) and is controlling here.

The court did not err in overruling the plea in abatement.

4. A motion was made to quash the indictment on the ground that there were two indictments in the case and that the return of the second indictment was improper. It is argued that since defendant's first conviction was reversed by this court in *Sims v. Balkcom*, 220 Ga. 7, *supra*, on retrial the case should have been tried on the original indictment and that the return of, and trial on, a second indictment places defendant in double jeopardy. This contention

is lacking in merit. In *Irwin v. State*, 117 Ga. 706 (45 SE 48) it was held: "in a criminal proceeding the pendency of a former indictment for the same offense is no ground for a plea in abatement or in bar . . . Where several indictments for the same offense are pending against the same person, it is immaterial upon which he is first tried." See also *Pride v. State*, 125 Ga. 750, 751 (54 SE 688) where it was said: "The defendant having sought the opportunity of going into jeopardy the second time for the same offense, [fol. 430] it is competent to put him in jeopardy again, but there is no constitutional or statutory requirement that he should in the second instance be tried upon the same indictment." The court did not err in overruling the motion to quash the indictment.

[fol. 431] 5. (a) The general grounds of the amended motion for new trial are not meritorious. The defendant was convicted of rape by force. The victim testified that the defendant forced her car off the road, dragged her into the woods, pulled her clothes off, and raped her. She also testified that the defendant kept choking her and threatened to kill her if she screamed. Her testimony was fully corroborated by other witnesses. The mother of the victim testified that she saw her daughter about one hour after the attack took place and that the daughter "could hardly walk . . . and her face was streaming blood and it was all swollen and red, and she was just bruised and dirty. Her clothes were in a terrible condition." Dr. Joseph M. Jackson testified that he examined the victim shortly after the attack and that she was "very emotionally upset and almost in a state of shock . . . her face had blood stains, had bruise marks, and there was clotted blood about, particularly, her nose, and the eyes were bloodshot. There were marks on her neck, chest, and breast, and there were marks on her lower abdomen, and her female parts showed evidence of fresh trauma." The doctor also testified that there had been a penetration of her private parts. Defendant's confession was also introduced in evidence. But even without this confession, the above mentioned evidence was sufficient to support the verdict. *Smith v. State*, 91 Ga. 10 (16 SE 378); *Holmes v. State*, 194 Ga. 849 (7) (22 SE2d 808).

(b) The first ground of the amended motion asserts that the court erred in admitting in evidence the signed written

statement of the defendant in which he confessed the commission of the charged offense and in refusing to strike the testimony of Sheriff Lee relating to the taking of the statement in that the facts and circumstances under which defendant's statement was made were insufficient to support the requirements of due process under the 14th Amendment of the United States Constitution.

The undisputed evidence as to the time and manner in which the statement was taken is as follows: the offense was committed about 10 a.m. on April 13, 1963. About 3 p.m. of the same day the defendant was arrested by Sergeant Sims of the State Patrol. Under instructions of Sergeant Sikes of Charlton County he was taken to the office of Dr. Jackson, and then to the jail in Waycross where he was placed in the custody of Ware County Sheriff Lee. About 6:30 p.m. of the same day, one Dudley Jones, a [fol. 433] Deputy Sheriff of Ware County, saw the defendant whom Jones had known for 12 years or more. No one else was present—Jones asked him what "he was doing up there." Sims replied that he "got in trouble with a white woman in Folkston, Georgia"; "that he raped a white woman in Folkston." Jones asked him whether he wanted to make a statement to that effect to the sheriff. Sims replied that he did. Jones took him to the sheriff's office where his statement was taken, reduced to writing, and signed at about 10:30 p.m. on April 13, 1963.

Sheriff Lee testified that before the defendant made any statement he advised him that he was entitled to an attorney and that the defendant said he did not want an attorney; he advised Sims that any statement he made could be used against him. The sheriff further testified that no threats or promise of hope or benefit or reward were made to induce Sims to make a statement. His statement was reduced to writing and signed by Sims in the presence of the sheriff, the Chief of the Ware County Police, Jones, the deputy sheriff of the county, and B. C. Worley, a constable.

On April 15, 1963, after Sims had been transferred to the Charlton County jail at Folkston, F. F. Cornelious of the [fol. 434] Bureau of Investigation read to the defendant his written statement of April 13 and he asked Sims if it were true. Sims replied "Yes sir, that is right."

The foregoing recital of facts as to the circumstances

under which the statement was made were not denied by the defendant in his examination by his counsel.

The related facts made a prima facie showing that the statement was freely and voluntarily made and admissible in evidence. Code §38-411; *Williams v. State*, 208 Ga. 704(2) (69 SE2d 199). However, counsel for the defendant contends that under the ruling in *Escobedo v. Illinois*, 378 U.S. 478, 84 S. Ct. 1758, the confession was inadmissible because it was obtained in the course of interrogation by the officers, when the defendant did not have the benefit of counsel, and under the Fourteenth Amendment to the Federal Constitution he was entitled to counsel at this stage of the investigation. In that case the accused while being investigated by police officers requested the services of a lawyer, which request was denied. His lawyer was denied the privilege of seeing or consulting with the accused during the interrogation. It was there held: "We hold, therefore, that where, as here, the investigation is no longer [fol. 435] a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied 'the Assistance of Counsel' in violation of the Sixth Amendment to the Constitution as 'made obligatory upon the States by the Fourteenth Amendment,' *Gideon v. Wainwright*, 372 U.S., at 342, 83 S. Ct., at 795 and that no statement elicited by the police during the interrogation may be used against him at a criminal trial." *Escobedo v. Illinois*, 84 S. Ct. 1758, 1765.

The factual situation in *Escobedo v. Illinois* is entirely different from the instant case. Here, the defendant, while not being interrogated by an officer as to any offense, voluntarily made an incriminating admission after he had been warned that it would be used against him and after he had been advised that he was entitled to the services of a lawyer and the defendant said he did not want one. The record discloses that the defendant was 29 years old with a third or fourth grade education. As far as the evidence dis-

closes, he was a man of average intelligence and capable of [fol. 436] understanding the consequences of his acts. While the decision of the majority in the Escobedo case may be as stated by Justice White in his dissenting opinion, viz.: "At the very least the Court holds that once the accused becomes a suspect and, presumably, is arrested, any admission made to the police thereafter is inadmissible in evidence unless the accused has waived his right to counsel." *Escobedo v. Illinois*, 84 S. Ct. 1758, 1767, the ruling of the majority does not give to the accused the *absolute right* to the services of a lawyer during the investigative stage of the proceedings against him regardless of his express statement that he does not want a lawyer.

[fol. 437] (c) In ground 3 of the amended motion for new trial error is assigned because the court, after giving appropriate instructions to the jury, left to them the question of whether or not the defendant's confession was voluntary, and instructed the jury to disregard the confession in the event they should determine that it was not voluntary. It is urged that this procedure violates rights guaranteed to defendant under the Fourth, Fifth, Sixth and Fourteenth Amendments of the Federal Constitution. Counsel insists that the decision of *Jackson v. Denno*, 378 U.S. 368 (84 SC 1774, LE) (which was a Federal habeas corpus proceeding) is controlling on this ground of complaint. Did we think that the *Jackson* case applied to this case we would unhesitatingly follow it, despite our firm conviction that it is illogical, impracticable and utterly unsound. But when we read that opinion we note a total absence of any consideration therein of the Georgia statute, *Code* §38-420, which provides that a conviction can not rest upon a confession alone, but the confession must be corroborated; or of the [fol. 438] Georgia Statute, *Code* § 38-411, requiring as an indispensable foundation to the introduction of an alleged confession a showing that it was freely and voluntarily made and that it was not induced by another by the slightest fear of punishment nor the remotest hope of reward; or of Georgia Law investing the trial judge with unquestionable power to review the case after conviction, and to set the verdict aside if he is not satisfied with it. *Code* §§ 6-1608; 70-101; 70-102; 70-202; 70-206; 70-208; 110-703; *Rogers* [fol. 439] *v. State*, 101 Ga. 561 (SE); *Central of Ga. v.*

Harden, 113 Ga. 483 (SE); *Taylor v. Central Railroad & Banking Co. of Ga.*, 79 Ga. 330 (SE); *Mills v. State*, 188 Ga. 620, (SE); *Deen v. Baxley State Bank*, 192 Ga. 300 (SE 2d). Indeed, the trial judge must approve the verdict, and if he does not, the State cannot review his action in setting aside the conviction. *Code Ann.* § 6-901 (Ga. L. 1957, pp. 224, 232); *State v. Jones*, 7 Ga. 422; *State v. Lavinia*, 25 Ga. 311; *State v. Steele*, 112 Ga. 39 (SE); *Eaves v. State*, 113 Ga. 749 (SE). We believe the Supreme Court will consider these facts and agree that the Jackson decision does not apply here.

The Jackson case approves the Massachusetts procedure whereby the judge first renders his judgment as to the voluntariness of the confession, and then submits the same question to the jury. As pointed out by the dissent of Justices Harlan, Clark and Stewart, this procedure is obviously more hurtful to the accused since it would tend to prejudice the jury by having the judge's judgment on [fol. 440] the same question before them while making their verdict, whereas the Georgia rule presents the question to the jury without giving them the judgment of the judge. It is inconceivable that any Justice could fail to see this vital point. But taking the Jackson opinion at what it says is its basis, it merely condemns having the trial of voluntariness joined in the determination of guilt because of a possibility of prejudicing the jury, but when the judge acts after conviction as in Georgia, there is no jury to be prejudiced. The Massachusetts rule requires that the judge, who does not pass upon the guilt or innocence make the determination of voluntariness, which rule is approved in Jackson. Therefore, the crux of the matter as seen by that court is satisfied by Georgia law which empowers the trial judge, after the jury has returned a verdict of guilty to set that verdict aside if he alone is not satisfied with it. To say the judge will be prejudiced is to say even Justices will be prejudiced and, hence, no constitutional trial or re-[fol. 441] view can be had. This means that although initially in passing upon admissibility he heard evidence *prima facie* showing the voluntariness and allowed the introduction of the confession, but after hearing conflicting evidence on that issue, the judge, whom the Supreme Court does not say will be prejudiced, can and we must assume will, set

the verdict aside if he believes an illegal confession was [fol. 442] considered by the jury. He thus has power to reverse the jury on the question of voluntariness. It would be difficult to find a more complete satisfaction of the requirement of Jackson than Georgia provides. And the unsound implications of Jackson should not be extended one iota to make it cover cases not explicitly covered by it such as this case where there was no evidence to make any issue of voluntariness. Without an issue there is nothing to try.

We are aware of the strange speculation as to how jurors might violate their oaths in the opinion in Jackson, all of which was pure imagination without a scintilla of fact or law to support it. In thus indicting our jury system, that court unjustly reflects upon those officials participating in the trial least subject to criticism. They, the jurors, unlike the judge and other officers, including Supreme Court Justices, do not ask to serve, but are serving only because they obey the court summons to render valuable services to their country, and this without adequate pay. Imperfect though it be, the American jury system is the fairest and purest means of ingenuity of man has found for resolving [fol. 443] issues of fact in court trials. On its record the jury deserves the highest praise of all men and particularly Justices, rather than unfounded speculation as to possibilities of their betrayal of trust and violating their oaths.

As pointed out above we think an affirmance meets the demands of Jackson. But that decision is so shocking in condemning procedures that have been practiced for centuries with the approval of both State and Federal courts, until we think every judge has a duty to speak out loudly against it. Mr. Justice Black, with more service on that court than any other member, could never be called a reactionary, yet he could not approve the opinion of the majority and said so very plainly in these words: "Though able to cite as support for its holding no prior cases suggesting that the New York practice is so unfair to defendants that it must be held unconstitutional, the court does refer to commentators who have made the suggestion. None of these commentators appears to have gathered factual data to support his thesis, nor does it appear that [fol. 444] their arguments are at all rooted in the actual

trial of criminal cases." Here is the heart of the matter, "actual trial". Mr. Justice Clark, correctly in our opinion, points out that since the New York procedure had not been attacked in the trial court it was not proper for the Supreme Court to consider it since the defendant's counsel—who had 50 years experience in practicing law and as a judge—did not object to the statements being put in evidence. In taking that position he stands in the company of thousands of experienced lawyers and judges throughout America.

Then the opinion of Justice Harlan, whom all Americans respect as an outstanding, experienced lawyer, which is concurred in by Justices Clark and Stewart both of whom have had wide experience in the practice of law, specifically enumerated insuperable legal barriers to the majority opinion when he pointed out that only seven years ago that same court in *Stein v. New York*, 346 U.S. 156 (S Ct ,

L Ed), directly and explicitly held the same procedure [fol. 445] law valid, and then only a year ago that court in *Spano v. New York*, 360 U.S. 315 (S Ct , L Ed), reaffirmed its validity. How can the majority expect the rest of us to respect their decisions when they themselves show no respect whatever for them? Justice Harlan shows that that court has repeatedly as in *Opper v. United States*, 348 U.S. 84, 95 (S Ct , L Ed), rejected *speculation* that a jury would disregard the instructions of the court, yet when the speculation which is no more than imagination of the majority that a jury might disregard instructions is lifted from their opinion there is nothing left.

Mr. Justice Brennan, speaking at the Conference of Chief Justices in New York in 1964, approved and encouraged criticism of court decisions when based upon reason and done with due respect. That duty we are trying to perform now, and we hope he will consider our criticism. It seems to us that when the majority in total disregard for the useless piecemeal trials it forces upon trial courts, with the resulting delays and overburdens of courts, and [fol. 446] contrary to procedure laws that have endured for centuries with judicial approval as to validity twice within seven years by that court, and now by the smallest majority possible—a single Justice—imposes upon the trial

courts of America the personal notions of only five out of the nine Justices of that court, a clear case of refusing to exercise proper judicial self-restraint is made. One would have to claim infallibility who would thus set the mere opinion of the five—void of support by law or precedent—against the foregoing enumerated overwhelming supports for the law they strike down. Justices should remember that they have no monopoly on either wisdom or integrity, and before they indict the reliability of jurors, they should think of the sacred challenge that the guiltless cast the first stone.

We want to do justice and protect the accused in all his rights and we know Georgia law concerning confessions does this, but we simply are finding it frustrating and exceeding difficult to do this when confronted constantly with [fol. 447] a new and strange rule with no basis of law but established by a majority of one of the Supreme Court. Unless that court becomes willing to abide by its own decisions, and respect State laws, we will soon find State courts unable to longer function. If State courts are to effectively perform their duty of administering the criminal laws which protect life, liberty and property, the heavy hand of the Supreme Court in this field must in some way be removed from the throats of State courts.

We yield to no living men in our appreciation of and highest respect for the Supreme Court as a vital part of our Government and its proper supremacy over all courts, including this one. But if those occupying it will not uphold State procedure law that is constitutional and follow their own decisions sustaining those laws, chaos will reign in the lower courts of America. We hope the present Justices will, after more mature consideration overrule *Jackson v. Denno*, 378 U.S. 368, *supra*, and allow State courts to try cases according to law rather than the personal notions of [fol. 448] just barely more than half of the Justices. We have always done as we think all Justices should do even in cases of doubtful soundness of a law or decision where there has been long reliances thereon and innocent people, including the State, had acted thereon and would suffer irreparable loss if the law is stricken down—applied the rule of *stare decisis* and upheld it. For it is better that laws of doubtful soundness be certain than that all law stand in

eminent danger of being declared void because it is not written as some Justices would prefer. Legislatures alone determine the wisdom of laws, and courts, despite their belief that the law is unwise, nevertheless are bound by the Constitution to confine their considerations of such laws to their constitutionality alone. Courts possess neither the facilities, the experience, nor the wisdom of legislators to qualify them to pass upon the wisdom of laws.

We affirm the instant case in the belief that we are not violating *Jackson v. Denno*, 378 U.S. 368, *supra*, and in the firm conviction that such a judgment will rest upon sound, [fol. 449] tested and just law and is indispensable to law enforcement. We regret to say that, although acting in the utmost of good faith, but apparently unacquainted with the realities and practicalities of orderly procedure in the trial of cases, the majority of our Supreme Court by striking down established rules of procedure in trials are shaking the foundations of orderly judicial trials which can only be followed by chaos in the trial courts of America. The admirable concern of the Supreme Court for the protection of all individual right we fervently hope will not extend to destruction of the superior rights of the public to be protected against rapists, robbers, kidnappers and murderers. To do so would betray the highest trust placed in our courts. One should never be allowed to destroy many. We make this plea to the Supreme Court upon the assumption that they like the members of this court seek knowledge and advice, and respect our right, yea, our duty to speak frankly and respectfully when we believe an alarm-[fol. 450] ing injustice is being unintentionally forced upon American courts by their notions of what ought to be rather than what is established by others worthy and qualified to provide.

[fol. 451] (d) In ground 4 of the motion for new trial error is assigned on the following charge: "And then, Gentlemen, in the event you find the defendant guilty you may fix the punishment at not less than so many years, which could not be less than one, and not more than so many years, which could not be more than twenty. For illustration, and for illustration only, you could fix his punishment at ten years, or five years, or twenty years, or at one year, or seven years, just any figure between one and twenty years."

It is urged that the charge "led the jury to believe that it could only fix the term of punishment at any figure between one and twenty years, where in fact and law the jury could fix a minimum and maximum term." The provision for a sentence of not less than one year and not more than 20 years as provided in *Code* §26-1302 applies only where a recommendation of mercy is made by the jury after a finding of guilty. The jury in this case made no recommendation. Whether or not the charge was error need not be determined in view of the verdict. *Golden v. State*, 213 Ga. 481 (1) (99 SE2d 882); *Russell v. State*, 196 Ga. 275 (4) (26 SE2d 528).

[fol. 452] 6. The same issues are raised in the motion to suppress illegally obtained evidence as were raised in the first ground of the amended motion for new trial. The ruling made on the latter motion in Division 5(b) of this opinion is controlling here, and for the reasons there stated, the court did not err in overruling the motion to suppress illegally obtained evidence.

[fol. 453] *Judgment affirmed. All the Justices concur, except Almand, J., who dissents from the ruling in division 5(c) and from the judgment of affirmance and Cook, J., disqualified. Quillian, J., concurs specially.*

[fol. 454] **ALMAND**, Justice, dissenting. I dissent only from the ruling of the majority in Division 5c of the opinion and the corresponding Division 5c in the headnote and the judgment of affirmance. As pointed out in this dissent, I would affirm on condition of the outcome of future proceedings in the case.

In *Jackson v. Denno*, 378 U.S. 368 (84 SC 1774), the Supreme Court of the United States held that the procedural method of passing upon the voluntariness or unvoluntariness of confessions in criminal cases, as practiced and sanctioned by the State of New York, violated the constitutional rights of the defendant. The procedural methods in such cases are the same in the State of Georgia as in the State of New York. The trial court in this case followed the procedure long approved by this court and approved by the United States Supreme Court in *Stein v. New York*, 346 U.S. 156 (73 SC 1077, LE), until it was overruled on June 22, 1964, by *Jackson v. Denno*, supra. The instant case was tried subsequent to *Jackson v. Denno*, supra, and was controlled by the ruling there made.

I would reverse the trial court solely upon the ground that the procedure followed in the instant case for determining the voluntariness of defendant's confession violates the ruling of the United State Supreme Court in *Jackson v. Denno*, supra, with direction that a jury be impaneled as required in a capital felony case for the sole purpose of determining whether the confession was or was not voluntarily given, and if the court finds it was voluntarily given, it be admitted in evidence and submit the question, under proper instructions, to the jury. If the jury finds that it [fol. 455] was voluntary, the judgment denying a new trial will stand affirmed. But if either the trial judge or the jury finds that it was not voluntarily given, the judgment denying a new trial will stand reversed, and a new trial is ordered on the guilt or innocence of the defendant without the confession being admissible in evidence. *Code* §6-1610. Compare *Wilson v. State*, 173 Ga. 275 (5e) (160 SE 319).

[fol. 456]

IN THE SUPREME COURT OF GEORGIA

22939

ISAAC SIMMS, JR.

v.

THE STATE

JUDGMENT—July 14, 1965

This case came before this court upon a writ of error from the Superior Court of Charlton County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur except Almand, J., who dissents from the ruling in division five-c and from the judgment of affirmance; and Cook, J., disqualified. Quillian, J., concurs specially.

[fol. 457] IN THE SUPREME COURT OF GEORGIA

No. 22939

[Title omitted]

No change—Denied—All the Justices concur, except Almand J., who dissents—Cook, J., disqualified.

MOTION FOR REHEARING—Filed July 23, 1965

Comes now, ISAAC SIMS, JR., plaintiff-in-error, and within the time allowed by law, files this his Motion for Rehearing in the above-stated case, and for ground thereof, says:

1

The Court misconceived and misconstrued the law applicable to plaintiff's claim that the statutory system or procedure for selecting grand and traverse jurors is inherently unconstitutional. In division 1(d) at page 4 of the opinion, the Court rejects plaintiff's contention stating that "No attack is made on this statute," Georgia Code 92-6307. Plaintiff admits that he does not challenge the facial constitutionality of the statute but presently and throughout these proceedings has attacked the constitutionality of the system established pursuant to this statute. The thrust of this attack is that the statutory system of selecting citizens eligible for jury service from segregated tax digests is indistinguishable from the system of selecting white and colored jurors condemned in *Avery v. Georgia*, 345 U.S. 559, and is accordingly unconstitutional. *Avery* struck down the segregated system of selection and the resulting danger of abuse. Where such a system is used, "an actual showing of discrimination on the basis of comparative numbers of Negroes and whites on the jury lists" is not required. *Williams v. Georgia*, 75 S. Ct. 814.

Swain v. Alabama, 85 S. Ct. 824, is readily distinguishable from the case at bar. In *Swain*, there was neither a state statute which required the jury commissioners to use segregated tax digests nor was there any evidence at all that the "city directories, registration lists, club and church lists," used contained racial labels. 84 S. Ct. 828. More-

over, there is no evidence here that the jury commissioners conscientiously conferred with members of both races in search of qualified jurors as in *Swain*. *Ibid.* 828, 829.

Mr. Justice White was careful to distinguish the basis of the Court's holding in *Swain* and to clearly demonstrate that the prior law remained unchanged.

Therefore, it is respectfully submitted that the Court has misapplied and misconstrued the law applicable to this ground of plaintiff's jury discrimination claim.

2

The Court misapplied the law applicable to plaintiff's claim that the jury lists were improperly drawn. Georgia Code Annotated 59-106 contains no precatory language. Mandatory language is used throughout this code section. The language of Code Section 59-106 is indistinguishable from that used in Code Section 59-701, passed on in *Blevins v. State*, 141 S.E. 2d 431. Therefore, plaintiff's conviction can stand in the face of this claim only if the Court is willing to indulge an ad hoc construction of Code Section 59-106 which whittles away longstanding procedures prescribed for the selection of juries.

3

In division 1(a) at pages 2 and 3 of the opinion, the Court [fol. 459] incorrectly decided plaintiff's claim that the court below had erroneously excluded certain jury lists offered to prove a pattern and practice of systematic and arbitrary inclusion and exclusion of Negroes as qualified jurors. Refusal to admit prior years' jury list was manifestly error, and unconstitutional because it impeded fair litigation of a federal question. These lists were particularly relevant. Plaintiff's claim rests in part on the use of tax digests bearing racial labels; prior jury lists demonstrate beyond doubt that where such tax digests have been used in the past discrimination has occurred. Therefore, the Court has clearly decided the ground of plaintiff's claim contrary to law as stated in *Coleman v. Alabama*, 84 S. Ct. 1152, and *Carter v. Texas*, 177 U.S. 442, 449.

In division 1(a) of the opinion at pages 1 and 2, the Court decides the issue whether plaintiff made out a prima facie case of jury discrimination inconsistently with the relevant federal decisions. The Court rejects (1) the inference to be drawn from the use of racially designated tax digests; (2) the use of different colored paper to designate the white and colored sections of those tax digests; and (3) evidence that the jury commissioners first drew from the white section A through Z and then proceeded, if at all, to the colored section. The Court rejects this constitutionally compelled inference of discrimination because "one of the jury commissioners testified that race was not a factor in the compilation of jury lists." Disclaimers of discrimination by the commissioner has no bearing on whether a prima facie case is made out. It is settled that a jury commissioner's testimony that he did not discriminate racially is insufficient alone to rebut a prima facie case of discriminatory selection. *Eubanks v. Louisiana*, 356 U.S. 584; *Reece v. Georgia*, 350 U.S. 85; *Norris v. Alabama*, 294 U.S. 587.

[fol. 460] Plaintiff further submits that such disclaimers could not in any way refute the inference to be drawn from the fact that the opportunity to discriminate racially inheres in the statutory system created for selecting jurors. An intimation to that effect is wholly untenable if not outright ludicrous.

In division 5(b) at pages 14 and 15 of the opinion, the Court erroneously rejected plaintiff's claim that his confession obtained while he was without the benefit of counsel was inadmissible. There is no evidence which shows a constitutionally adequate waiver of the right to counsel. Waiver of a valuable constitutional right is not to be lightly inferred absence evidence that plaintiff knowingly and understandingly forewent his right to counsel. *Fay v. Noia*, 372 U.S. 391; *Johnson v. Zerbst*, 304 U.S. 458.

In division 5(c) as revised by page 22 of the opinion, the Court misconstrued the basis of and thus misapplied the Supreme Court's decision in *Jackson v. Denno*, 378 U.S. 368. *Jackson* does not turn on the likelihood that the jury will be prejudiced but upon the existence of a state procedural rule which poses "substantial threats to a defendant's constitutional rights to have an involuntary confession entirely disregarded and to have the coercion issue fairly and reliably determined." 84 Sup. Ct. 1187.

What a trial judge made do when reviewing the case on a post-conviction motion for new trial cannot cleanse the initial procedure followed of its unconstitutional taint. For, the historical facts "found" pursuant to illegal procedures cannot be realistically expected to furnish the basis for correct conclusions if and merely because the trial judge may later apply a correct standard at a different procedural stage. *Rogers v. Richmond*, 365 U.S. 534.

[fol. 461] *Jackson* places the burden of initially determining the admissibility of a confession upon the trial judge. Under *Jackson*, the trial judge must do what a Georgia Judge does not in passing on a post-conviction motion for new trial: find the facts independently of the jury and rule on the basis of the facts he himself has found. The trial judge did not do so at any stage of the proceedings. Therefore, the Supremacy Clause compels this Court, despite its own strongly held contrary notions of what the law ought to be, to void plaintiff's conviction. Any other disposition is unauthorized and constitutes an irreparable "breach, rather than the administration of law." *Wrought Iron Range Co. v. Johnson*, 84 Ga. 759.

WHEREFORE, movant prays that a rehearing be granted in this case and the decision of the Court be reversed.

Howard Moore, Jr., William H. Alexander, 859½
Hunter St., N.W., Atlanta, Georgia 30314, Counsel
for Movant

[fol. 462] ATTACHMENT TO MOTION FOR REHEARING

CERTIFICATE OF PROBABLE CAUSE FOR REHEARING

I, HOWARD MOORE, JR., of counsel for ISAAC SIMS, JR., plaintiff-in-error, do certify that, upon careful examination of the opinion of the Court in this case, I verily believe that the facts stated and law cited in the attached motion for rehearing have been overlooked and misapplied by the Court, which facts and law are material, and, if considered would require a different judgment from that rendered.

I, also, certify that a copy of the within and foregoing motion for rehearing has been served upon the Honorable Dewey Hayes, and the Honorable Peyton Hawes, Jr., counsel for the defendant-in-error, this day, prior to filing.

This 22nd day of July, 1965.

Howard Moore, Jr.

Subscribed and sworn to before me, this 22nd day of July, 1965.

Alice M. Lewis, Notary Public, Georgia State at Large.

My Commission Expires June 24, 1968.

[fol. 463] [File endorsement omitted]

[fol. 464]

IN THE SUPREME COURT OF GEORGIA

22939

ISAAC SIMS, JR.,

v.

THE STATE.

ORDER DENYING MOTION FOR REHEARING—July 26, 1965

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied. Almand, J., dissents. Cook, J., disqualified.

[fol. 465]

IN THE SUPREME COURT OF GEORGIA

No. 22939

[Title omitted]

Motion for Rehearing Denied July 26, 1965

MOTION FOR STAY PENDING APPEAL AND/OR CERTIORARI TO THE
SUPREME COURT OF THE UNITED STATES—Filed July 28, 1965

Now comes the plaintiff-in-error, ISAAC SIMS, JR., in the above-styled appeal and moves this Honorable Court to stay transmission of its remittitur to the Charlton Superior Court, Waycross Judicial Circuit, Georgia, and to stay execution of the sentence imposed upon him by virtue of the verdict and judgment rendered and entered against him in that Court.

As grounds therefor, the plaintiff-in-error shows the following:

1. That on July 14, 1965, this Honorable Court affirmed the judgment of conviction against the plaintiff-in-error in the Court below.

2. On July 23, 1965, the plaintiff-in-error filed a motion for rehearing in said case and that motion was denied by this Court on July 26, 1965.

3. The plaintiff-in-error believes that he has good cause for appeal and/or petition for certiorari to the Supreme Court of the United States and plaintiff-in-error intends to perfect such further appellate remedy with due diligence and within the time allowed by the laws of the United States.

[fol. 466] 4. That unless this Honorable Court stays the transmission of its remittitur and service of sentence, the issues which the plaintiff-in-error seeks to have adjudicated in the Supreme Court of the United States will become moot, since otherwise, the plaintiff-in-error would be summarily resentenced and his life taken by electrocution in the electric chair.

WHEREFORE, the plaintiff-in-error prays that his motion be allowed and transmission of the remittitur and execution of sentence be stayed pending final determination of this cause in the Supreme Court of the United States.

**Howard Moore, Jr., William H. Alexander, 859½
Hunter St., N.W., Atlanta, Georgia 30314 At-
torneys for Plaintiff-in-Error.**

[fol. 467]

ORDER

The within and foregoing motion for stay of the transmission of remittitur and of execution of sentence read and considered,

It Is Hereby allowed and ordered filed, and

The transmission of the remittitur and execution of sentence is hereby stayed and by this order is stayed pending final determination of said appeal and/or certiorari in the Supreme Court of the United States.

This 28th day of July, 1965.

H. H. Diechmont Chief Justice, Supreme Court of
the State of Georgia.

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Certificate of Service (omitted in printing.)

[fol. 468] [File endorsement omitted]

[fol. 469] Clerk's Certificate to foregoing transcript
omitted in printing.

[fol. 470] SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No.

ISAAC SIMS, JR., Petitioner,

VS.

GEORGIA

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF
CERTIORARI—October 19, 1965

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including Nov. 23rd, 1965.

Hugo L. Black, Associate Justice of the Supreme
Court of the United States,

Dated this 19th day of October, 1965.

[fol. 471] SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 918 Misc.

ISAAC SIMS, JR., Petitioner,

v.

GEORGIA

On petition for writ of Certiorari to the Supreme Court of the State of Georgia.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—
June 20, 1966

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted limited to Questions 1, 2, 3, 4, and 5 presented by the petition which read as follows:

"1. Whether petitioner's Fourteenth Amendment rights were violated by a conviction and sentence to death obtained on the basis of a confession made under inherently coercive circumstances within the doctrine of *Fikes v. Alabama*, 352 U.S. 191.

"2. Whether petitioner's Fourteenth Amendment rights were violated by the failure of the Georgia courts to afford a fair and reliable procedure for determining the voluntariness of his alleged coerced confession in disregard of the principle of *Jackson v. Denno*, 378 U.S. 368.

[fol. 472] "3. Whether petitioner's Fourteenth Amendment right to counsel as declared in *Escobedo v. Illinois*, 378 U.S. 478, was violated by the use of his confession obtained during police interrogation in the absence of counsel, or whether petitioner's right to counsel was effectively waived.

"4. Is a conviction constitutional where:

- (a) local practice pursuant to state statute requires racially segregated tax books and county jurors are selected from such books;**
- (b) the number of Negroes chosen is only 5% of the jurors but they comprise about 20% of the taxpayers; and**
- (c) a Negro criminal defendant's offer to prove a practice of arbitrary and systematic Negro inclusion or exclusion based on jury lists of the prior ten years is disallowed.**

"5. Where a Negro defendant sentenced to death in Georgia for the rape of a white woman offers to prove that nineteen times as many Negroes as whites have been executed for rape in Georgia in an effort to show that racial discrimination violating the equal protection clause of the Fourteenth Amendment produced such a result, may this offer of proof be disallowed?"

The case is transferred to the appellate docket, as No. 1433.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

June 20, 1966.